S. HRG. 98-1126

AUTHORIZING APPROPRIATIONS TO THE NUCLEAR REGULATORY COMMISSION

HEARING

BEFORE THE

SUBCOMMITTEE ON
ENERGY RESEARCH AND DEVELOPMENT

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

SECOND SESSION

ON

S. 2846 (Section 201)

A BILL TO AUTHORIZE APPROPRIATIONS TO THE NUCLEAR REGULATORY COMMISSION IN ACCORDANCE WITH SECTION 261 OF THE ATOMIC ENERGY ACT OF 1954, AND SECTION 305 OF THE ENERGY REORGANIZATION ACT OF 1974

JULY 31, 1984

Printed for the use of the
Committee on Energy and Natural Resources

U.S. GOVERNMENT PRINTING OFFICE

40-586 O WASHINGTON : 1984

S311-16

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AUTHORIZING APPROPRIATIONS TO THE NUCLEAR REGULATORY COMMISSION

TUESDAY, JULY 31, 1984

U.S. SENATE,
SUBCOMMITTEE ON ENERGY RESEARCH AND DEVELOPMENT,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:20 p.m., in room SD-366, Dirksen Office Building, Hon. Pete V. Domenici presiding.

Present: Senators Domenici and Levin.

Also present: Paul Gilman, professional staff member; D. Michael Harvey, chief counsel for the minority; and Benjamin S. Cooper, professional staff member for the minority.

OPENING STATEMENT OF HON. PETE V. DOMENICI, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

Senator DOMENICI. We are going to start the hearing. I do not know how long it will be before we have another vote. I have voted. I understand there may be 25 or 30 minutes intervening before the next vote. So rather than delay during that time, I understand there will be a speech by Senator Metzenbaum on the floor, I will get started.

I hope nobody construes that to mean that I am not interested in listening to Senator Metzenbaum's speech, but if any of you are, you might go down there. In any event, good afternoon.

Today's hearing is on a section of the Nuclear Regulatory Commission authorization bill, S. 2846, which amends the Nuclear Waste Policy Act of 1982. This bill was referred to us because this is the committee of principal jurisdiction for that law. Our referral of this bill is relatively short. Therefore, our efforts to broaden this hearing to include a discussion of the Department of Energy's draft mission plan, as had been expected, will be minimized, if not curtailed. Hopefully, if we want to discuss the Energy Department's draft mission plan, we would take another opportunity sometime in September to hear that plan in more detail.

We have several statements which we have been asked to insert in the record, including that of Governor Matheson from the State of Utah. We are waiting for a statement from the attorney general from the State of Vermont. In any event, those that are received will be made a part of the record.

[The text of S. 2846 and a statement from Governor Matheson follow:]

II

98TH CONGRESS
2D SESSION

S. 2846

[Report No. 98–546]

To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, and section 305 of the Energy Reorganization Act of 1974.

IN THE SENATE OF THE UNITED STATES

JUNE 29 (legislative day, JUNE 25), 1984

Mr. SIMPSON, from the Committee on Environment and Public Works, reports an original bill; which was read twice and referred to the Committee on Energy and Natural Resources until no later than August 10, 1984, by unanimous consent

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A BILL

To authorize appropriations to the Nuclear Regulatory Commission in accordance with section 261 of the Atomic Energy Act of 1954, and section 305 of the Energy Reorganization Act of 1974.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 1984 AND 1985

SEC. 101. There are hereby authorized to be appropriated to the Nuclear Regulatory Commission in accordance

with the provisions of section 261 of the Atomic Energy Act of 1954 and section 305 of the Energy Reorganization Act of 1974, for the fiscal years 1984 and 1985 to remain available until expended, $466,800,000 for fiscal year 1984 and $460,000,000 for fiscal year 1985.

SEC. 102. (a) The sums authorized to be appropriated in this Act for fiscal years 1984 and 1985 shall be allocated as follows:

(1) not more than $91,490,000 for fiscal year 1984 and $87,140,000 for fiscal year 1985, may be used for "Nuclear Reactor Regulation", of which an amount not to exceed $1,000,000 is authorized each such fiscal year to be used to accelerate the effort in gas-cooled thermal reactor preapplication review;

(2) not more than $70,910,000 for fiscal year 1984 and $74,770,000 for fiscal year 1985, may be used for "Inspection and Enforcement";

(3) not more than $36,280,000 for fiscal year 1984 and $35,710,000 for fiscal year 1985, may be used for "Nuclear Material Safety and Safeguards";

(4) not more than $199,740,000 for fiscal year 1984 and $193,290,000 for fiscal year 1985, may be used for "Nuclear Regulatory Research", of which an amount not to exceed $2,600,000 is authorized each

such fiscal year to be used to accelerate the effort in gas-cooled thermal reactor safety research;

(5) not more than $27,520,000 for fiscal year 1984 and $27,470,000 for fiscal year 1985, may be used for "Program Technical Support";

(6) not more than $40,860,000 for fiscal year 1984 and $41,620,000 for fiscal year 1985, may be used for "Program Direction and Administration".

(b) The Nuclear Regulatory Commission may use not more than 1 per centum of the amounts authorized to be appropriated under paragraph 102(a)(4) to exercise its authority under section 31a. of the Atomic Energy of 1954 (42 U.S.C. 2051(a)) to enter into grants and cooperative agreements with universities pursuant to such paragraph. Grants made by the Commission shall be made in accordance with the Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 501 et seq.) and other applicable law.

(c) Any amount appropriated for a fiscal year to the Nuclear Regulatory Commission pursuant to any paragraph of subsection 102(a) for purposes of the program referred to in such paragraph, may be reallocated by the Commission for use in a program referred to in any other paragraph of such subsection, or for use in any other activity within a program, except that the amount available from appropriations for such fiscal year for use in any program or specified activity may

not, as a result of reallocations made under this subsection, be increased or reduced by more than $500,000 unless—

(1) a period of thirty calendar days (excluding any day in which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain or an adjournment sine die) passes after the receipt, by the Committee on Energy and Commerce and the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Environment and Public Works of the Senate, of notice submitted by the Commission containing a full and complete statement of the reallocation proposed to be made and the facts and circumstances relied upon in support of such proposed reallocation; or

(2) each such committee, before the expiration of such period, transmits to the Commission a written notification that such committee does not object to such proposed reallocation.

SEC. 103. Moneys received by the Nuclear Regulatory Commission for the cooperative nuclear research program and the material access authorization program may be retained and used for salaries and expenses associated with such programs, notwithstanding the provisions of section 3617 of the Revised Statutes (31 U.S.C. 484), and shall remain available until expended.

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SEC. 104. From amounts appropriated to the Nuclear Regulatory Commission pursuant to this title, the Commission may transfer to other agencies of the Federal Government sums for salaries and expenses for the performance by such agencies of activities for which such appropriations of the Commission are made. Any sums so transferred may be merged with the appropriation of the agency to which such sums are transferred.

SEC. 105. Notwithstanding any other provisions of this Act, no authority to make payments under this Act shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

SEC. 106. (a) No funds authorized to be appropriated under this Act may be used to carry out any policy or program for the decentralization or regionalization of any Nuclear Regulatory Commission authorities regarding commercial nuclear powerplant licensing until sixty legislative days after the date on which the Commission submits to the Congress a report evaluating the effect of such policy or program on nuclear reactor safety: *Provided, however,* That the prohibition contained in this subsection shall not apply to any personnel assigned to the field, or to activities in which they were engaged, on or before September 22, 1983. The report shall include—

(1) a detailed description of the authorities to be transferred, the reason for such transfer, and an assessment of the effect of such transfer on nuclear reactor safety;

(2) an analysis of all comments submitted to the Commission regarding the effect on nuclear reactor safety which would result from carrying out the policy or program proposed by the Commission; and

(3) an evaluation of the results, including the advantages and disadvantages, of the pilot program conducted under subsection (b).

(b) Notwithstanding the prohibition contained in subsection (a), the Commission is authorized to conduct a pilot program for the purpose of evaluating the concept of delegating authority to regional offices for issuance of specific types of operating reactor licensing actions and for the purpose of addressing the issues identified in paragraphs (a)(1)–(3) of this section.

SEC. 107. (a) Of the amounts authorized to be appropriated under this Act for the fiscal years 1984 and 1985, such sums as may be necessary are authorized to be used by the Nuclear Regulatory Commission for—

(1) the acquisition (by purchase, lease, or otherwise) and installation of equipment to be used for the small test prototype nuclear data link program or for

any other program for the collection and transmission to the Commission of data from licensed nuclear reactors during abnormal conditions at such reactors; and

(2) a full and complete analysis of—

(A) the appropriate role of the Commission during abnormal conditions at a nuclear reactor licensed by the Commission;

(B) the information which should be available to the Commission to enable the Commission to fulfill such role and to carry out other related functions;

(C) various alternative means of assuring that such information is available to the Commission in a timely manner; and

(D) any changes in existing Commission authority necessary to enhance the Commission response to abnormal conditions at a nuclear reactor licensed by the Commission:

Provided, however, That no funds shall be available under this Act for the acquisition and installation of any equipment for the collection and transmission to the Commission of data from licensed nuclear reactors during abnormal conditions at such reactors, or for the analysis of such equipment, unless such acquisition and analysis includes, as one of the alternatives considered, a fully automated electronic nuclear data

link. The small test prototype referred to in paragraph (1) may be used by the Commission in carrying out the study and analysis under paragraph (2). Such analysis shall include a cost-benefit analysis of each alternative examined under subparagraph (C).

SEC. 108. Of the amounts authorized to be appropriated under this Act, the Nuclear Regulatory Commission may use such sums as may be necessary, in the absence of a State or local emergency preparedness plan which has been approved by the Federal Emergency Management Agency, to issue an operating license (including a temporary operating license under section 192 of the Atomic Energy Act of 1954, as amended) for a nuclear power reactor, if it determines that there exists a State, local, or utility plan which provides reasonable assurance that public health and safety is not endangered by operation of the facility concerned.

SEC. 109. Notwithstanding the second sentence of section 103 d. and the second sentence of section 104 d. of the Atomic Energy Act of 1954, as amended, the Nuclear Regulatory Commission is hereby authorized to transfer Facility Operating License numbered R–81 to a United States entity or corporation owned or controlled by a foreign corporation if the Commission—

(1) finds that such transfer would not be inimical to the common defense and security or to the health and safety of the public; and

(2) includes in such license, as transferred, such conditions as the Commission deems necessary to ensure that such foreign corporation cannot direct the actions of the licensee in ways that would be inimical to the common defense and security or the health and safety of the public.

TITLE II—AMENDMENT TO THE NUCLEAR WASTE POLICY ACT OF 1982

SEC. 201. The Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) is amended by adding a new section 126 as follows:

"SEC. 126. The provisions of sections 115, 116, 117, and 118 of this subtitle shall constitute the exclusive rights of participation by an affected State or Indian tribe in the planning, siting, development, construction, and operation of a repository or a monitored, retrievable storage facility that is required to be licensed by the Commission: *Provided, however,* That nothing in this Act shall preclude any recognized right of any State or Indian tribe under existing law with respect to such repository or monitored, retrievable storage facility.".

TESTIMONY

of the

STATE of UTAH

on the

STATES RIGHTS AMENDMENT

proposed for

S. 1291, THE NRC REAUTHORIZATION BILL

submitted to the

SENATE SUBCOMMITTEE ON ENERGY RESEARCH AND DEVELOPMENT

on

July 31, 1984

The State of Utah understands that this amendment to the bill would amend the Nuclear Waste Policy Act of 1982 ("NWPA") in the area of state and federal relations. While the State of Utah trusts that this amendment was drafted for the purpose of affirming state's rights under the Nuclear Waste Policy Act of 1982, the amendment as written, would actually limit the scope of participation, cooperation and consultation rights presently provided to the State in the NWPA. Specific concerns include:

1. The amendment as written may eliminate the existing requirement that many of the Department of Energy's ("DOE") preliminary siting decisions be subject to the rulemaking procedures required by the federal Administrative Procedure Act.

2. The amendment to the bill would also seem to foreclose similar requirements that DOE comply with the rulemaking procedures of DOE's own organization act, 42 U.S.C. 7191. For example, proposed Section 126 would seriously undermine the special procedural rights provided to state and local governments in 42 U.S.C. 7191(f).

3. Substantial procedural rights arising from many other parts of the Nuclear Waste Policy Act or other Federal, State or local laws may also be eliminated in this amendment to the bill by limiting states' rights "exclusively" to those arising under Sections 115, 116, 117 and 118. For example, other sections of the NWPA

specifically entitle states to consult with, and the cooperation of, the Department.

Additional problems have been identified. For example, the National Governor's Association notes that:

> the amendment affirms recognized rights of states, [but] it does not designate what these rights are. It also states that sections 115 to 118 of the Nuclear Waste Policy Act (NWPA) constitute the "exclusive rights" of states in the repository siting process.

Letter to the State Contacts on High Level Nuclear Waste from Holmes Brown, National Governor's Association, November 18, 1983.

The National Governor's Association letter points out additional problems that the reference to "exclusive rights" in the bill may create:

For example, it notes that federal agencies might be prohibited from offering state consultation rights on DOE documents not mentioned in the NWPA such as the methodology document; States' rights under existing or subsequent agreements with DOE, may also be limited to those issues specifically referred to in the NWPA; and States' rights may also be narrowly interpreted by courts in the event that the states' attempt to gain expanded consultation rights.

In conclusion, it is clear that no amendment should result in any diminution of states' existing rights under federal, state, or local law. Accordingly, the State of Utah respectfully requests that the Senate Subcommittee on Energy Research and Development, after considering our concerns, withdraw the amendment from further consideration.

Respectfully Submitted

Governor Matheson
July 31, 1984

Senator DOMENICI. I understand that perhaps at least one Senator, the Senator from Mississippi, intends to be heard, the junior Senator. If he arrives we will interrupt the witnesses and let him proceed. Since I want to get this finished as quickly as possible this afternoon, I am going to proceed and as I indicated, we will interrupt any of you if the Senator arrives.

Our first witness will be Mr. Ben Rusche, the Director of the Office of Civilian Radioactive Waste Management of the Department of Energy. He will be followed by Steven Frishman from the Governor's office of the State of Texas; David Berick from the Environmental Policy Institute. Following Mr. Berick, Mr. Sherwood Smith will be giving testimony on behalf of the Nuclear Energy Utility Industry.

I might say to you, Mr. Smith, we had intended to permit testimony with reference to the Department's draft mission plan. I am not sure how much of that we will get in, but we will accommodate you to the extent of accepting your statement and hope you will minimize reference to that. We want to do justice to it when there are others who are adequately prepared to offer their constructive comments or criticism thereof at a later time.

This is not a terribly complicated matter. Although it gets kind of complicated. For those who are interested, it is about a subject matter before this committee. It is about nine lines long, found in Senate bill 2846, wherein it is stated that all of the provisions, and then they are listed, of the Nuclear Waste Policy Act constitute the exclusive rights for State participation in the development, siting, planning, construction, or operation of a repository or a monitored, retrievable storage facility that is required to be licensed by the Commission. That is a reiteration of what was assumed by the committee to be the rights that States had when we passed the Waste Disposal Act in the lame duck session 2 years ago.

Then there is a small provision saying, "*Provided, however,* That nothing in this Act shall preclude any recognized right of any State or Indian tribe under existing law with respect to such repository or monitored retrievable storage facility." It is almost an inconsistency in that that brings us here today and an interpretation of the proviso with reference to a State's rights.

Very much time was spent, as everyone knows, giving the States, sovereign States various rights, including the right to decide they did not want the permanent depository for waste and sending it to the Congress and which then Congress could agree and exercise vicariously, so as to speak, the veto that a State might desire.

This proviso now has to be looked at from the standpoint of are there any other States' rights provisions that might effectively be inconsistent therewith. Furthermore, just because they existed before that law, as compared with somebody passing one a month ago or a year ago, does Congress intend to make that kind of additional State right effective or not.

I am not sure I stated it right, but at least I understand it in my own mind and I hope some of you do.

Ben, proceed. We are glad to hear from you.

STATEMENT OF BEN C. RUSCHE, DIRECTOR, OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT, DEPARTMENT OF ENERGY

Mr. RUSCHE. Thank you, Mr. Chairman. I am pleased to appear before you to discuss the Department of Energy's views on section 201 of the fiscal year 1984-85 NRC authorization bill, which you have just referred to.

Section 201 of S. 2846 proposes an amendment to the Nuclear Waste Policy Act of 1982. The Department of Energy opposes the amendment.

Before I discuss the Department's specific position on this proposed amendment, I would like to reaffirm my view of the act itself, that is, the Nuclear Waste Policy Act. Passage of the Nuclear Waste Policy Act of 1982 and its signing into law by the President represented a major step forward in our Nation's effort to manage high level waste and spent fuel.

The act is a prime example of the democratic, bipartisan process, in my opinion. Many provisions of the act are yet to be tested in actual practice, but the act has established unequivocally the U.S. commitment to geologic repositories as the choice for providing reasonable assurance for the long term that the public and the environment will be adequately protected against the potential hazards from high level radioactive waste and spent nuclear fuel.

If there ever was a case in which a law was set up to be interactive and responsive to the parties affected by the law, the Nuclear Waste Policy Act is that law. It provides a clear-cut mandate and climate for openness and consultation with States and the public.

Over these first 2 months as Director of the Office of Civilian Radioactive Waste Management, I have spent a substantial amount of my time interacting with the States, those States included in the potential first repository, those States included in the crystalline rock program, and many States through which waste may be transported. I am both obligated by law and personally committed to State involvement on a regular basis.

The Department opposes adoption at this time of any amendments to the Nuclear Waste Policy Act. From my perspective, this law is working, as written. I believe that we should continue with it, as is, until such time as it does not seem to be working.

Section 201 of S. 2846 would amend the act so that the provisions of sections 115, 116, 117, and 118 shall constitute the exclusive rights of participation by an affected State and Indian tribe in planning, siting, development, construction, and operation of a repository or a monitored, retreivable storage facility that is required to be licensed by the Commission.

By having the provisions of these sections constitute exclusive rights of participation by affected States and tribes, in our view, the Department of Energy could be precluded from continuing informal consultation and cooperation with States and tribes.

Adoption of the proposed amendment contained in S. 2846 could, in our view, have a number of specific severe, adverse effects. It could, for example:

Prevent the Department of Energy from working with local governments and communities in early phases of the program;

Preclude information activities between the Department and prenotification States and tribes.

Preclude information activities between the Department and first repository States that have not been formally designated as affected Indian tribes.

Prevent us from working with and providing financial assistance to State organizations at the national level whose constituents may be affected.

And prevent us from working with States which are not potential repository States but which are involved in or would be affected by transportation of nuclear waste.

The Department has endeavored to apply the provisions in the act in ways that most effectively accomplish participation by States and Indian tribes. Actions which could narrow participation would adversely impact the interests of such States and tribes.

In addition, in our view, major participation of affected States and tribes in the site characterication process might have to await signing of formal consultation and cooperation agreements which are currently being negotiated under section 117 of the NWPA.

Mr. Chairman, you have noticed that I have focused my attention on the first portion of the proposed amendment, as you have suggested, and that it is this portion that I think has the potential effect that deserves our attention in the execution of the program.

In summary, I would like to confirm the Department's position as previously indicated by letter dated November 14, 1983, from the Secretary to Chairman McClure, regarding the adoption of the proposed amendment to the NWPA.

The Department of Energy opposes adoption of such legislation. First, the NWPA of 1982 represents a hard-won compromise achieved after literally years of consideration and debate. It would be premature to amend the act. Second, we believe the provisions of the act relating to formal as well as informal consultation and cooperation with the affected States and Indian tribes are working and we see no need for amendment at this time.

That concludes my statement, Mr. Chairman.

[The prepared statement of Mr. Rusche and the November 14, 1983, letter follow:]

STATEMENT BY

BEN C. RUSCHE
DIRECTOR, OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT
U.S. DEPARTMENT OF ENERGY

BEFORE THE

SUBCOMMITTEE ON ENERGY RESEARCH AND DEVELOPMENT
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

JULY 31, 1984

Mr. Chairman and Members of the Subcommittee.

I am pleased to appear before you to discuss the Department of Energy's views on Section 201 of the Fiscal Year 1984 and 1985 Nuclear Regulatory Commission Authorization Bill (S. 2846).

Section 201 of S. 2846 proposes an amendment to the Nuclear Waste Policy Act of 1982. The Department of Energy opposes the amendment.

Before I discuss the Department's specific position on this proposed amendment, I would like to reaffirm my view of the Nuclear Waste Policy Act.

Passage of the Nuclear Waste Policy Act of 1982 and its signing into law by the President represented a major step forward in our Nation's effort to manage high-level waste and spent fuel.

The Act is a prime example of the democratic, bipartisan process. Many provisions of the Act are yet to be tested in actual practice, but the Act has established, unequivocally, the United States commitment to geologic repositories as the choice for providing reasonable assurance, for the long-term, that the public and the environment will be adequately protected against the potential hazards from high-level radioactive waste and spent nuclear fuel.

If there ever was a case in which a law was set up to be interactive and responsive to the parties affected by the law, the Nuclear Waste Policy Act is that law. It provides a clearcut mandate and climate for openness and consultation with States and the public.

Over these first two months as Director of the Office of Civilian Radioactive Waste Management, I have spent a substantial amount of my time interacting with the States -- those States included in the potential first repository states, those States included in the crystalline rock program, and many States through which waste may be transported. I am both obligated by law and personally committed to involvement on a regular basis.

The Department opposes adoption at this time of any amendments to the Nuclear Waste Policy Act. From my perspective, this law is working -- as written. I believe that we should continue with it, as is, until such time as it doesn't seem to be working.

Section 201 of S. 2846 would amend the Act so that "The provisions of sections 115, 116, 117, and 118 ... shall constitute the exclusive rights of participation by an affected State and Indian tribe in planning, siting, development, construction, and operation of a repository or a monitored, retrievable storage facility that is required to be licensed by the Commission...."

By having the provisions of these sections constitute "exclusive rights of participation by affected States and tribes," in our view, the Department of Energy could be precluded from continuing informal consultation and cooperation with States and tribes.

Adoption of the proposed amendment contained in S. 2846 could, in our view, have a number of specific severe adverse effects. It could, for example:

1. Prevent the Department of Energy from working with local governments and communities in early phases of the program.

2. Preclude information activities between the Department and pre-notification States and tribes.

3. Preclude information activities between the Department and first repository tribes that have not been formally designated as "affected Indian tribes."

4. Prevent us from working with and providing financial assistance to state organizations at the national level whose constituents may be affected.

5. Prevent us from working with States which are not potential repository states but which are involved in or would be affected by transportation of nuclear waste.

The Department has endeavored to apply the provisions in the Act in ways that most effectively accomplish participation by States and Indian tribes. Actions which could narrow participation would adversely impact the interests of such States and tribes.

In addition, in our view, major participation of affected States and tribes in the site characterization process might have to await signing of formal consultation and cooperation agreements which are currently being negotiated under section 117 of the Nuclear Waste Policy Act.

In summary, Mr. Chairman, I would like to confirm the Department's position, as previously indicated by letter dated November 14, 1983, from the Secretary to Chairman McClure, regarding the adoption of the proposed amendment to the Nuclear Waste Policy Act.

The Department of Energy opposes adoption of such legislation. First, the Nuclear Waste Policy Act of 1982 represents a hard-won compromise achieved after literally years of consideration and debate. It would be premature to amend the Act. Second, we believe the provisions of the Act relating to formal as well as formal consultation and cooperation with the affected States and Indian tribes are working and we see no need for amendment at this time.

Thank you, Mr. Chairman.

I will be happy to attempt to answer any questions you or members of the Committee have.

THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585
November 14, 1983

Honorable James A. McClure
Chairman, Committee on
Energy and Natural Resources
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing concerning a provision, contained in legislation authorizing funds for fiscal years 1984 and 1985 for the Nuclear Regulatory Commission that is being considered by the Senate Committee on Environment and Public Works, which would affect the rights of a State or Indian tribe to participate in the planning, siting, development, construction, and operation of a civilian nuclear waste repository or a retrievable, monitored storage facility.

The Department of Energy opposes adoption of such legislation. First, the Nuclear Waste Policy Act of 1982 (the Act) represents a hard-won compromise achieved after literally years of consideration and debate. It would be premature to amend the Act and possibly upset its finely-tuned and balanced provisions. Second, I believe the provisions of the Act relating to consultation and cooperation with the affected States are working well and see no need for amendment at this time. Ironically, by providing that the provisions of title I of the Act constitute the exclusive rights of participation by a State, the amendment could preclude our present informal consultation and cooperation arrangements because the Act makes no provision for arrangements other than full and formal written agreements.

The Office of Management and Budget advises that, from the standpoint of the President's program, there is no objection to the submission of these comments for the consideration of the committee.

Sincerely,

Donald Paul Hodel

DONALD PAUL HODEL

cc: Honorable J. Bennett Johnston

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Senator DOMENICI. I noticed the distinguished Senator, Senator Cochran, has arrived. Would you like to speak to this issue? We are expecting you and we would be delighted to hear from you right now.

Senator COCHRAN. Thank you, Mr. Chairman. I appreciate that.

Senator DOMENICI. You wait, I have some questions. Let's proceed with the Senator.

STATEMENT OF HON. THAD COCHRAN, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator COCHRAN. Mr. Chairman, I appreciate very much your convening this hearing and also for the purpose of your consideration of the amendment proposed by the distinguished Senator from Vermont, Mr. Stafford, giving us an opportunity to review his suggestion.

I have a prepared statement, Mr. Chairman, which I would ask be made a part of the record in its entirety.

Senator DOMENICI. Without objection, it is made a part of the record.

Senator COCHRAN. I will attempt to summarize from that prepared statement to highlight some of the concerns that I have and that others have in the State of Mississippi about the subject before the committee. Specifically, with respect to the Stafford amendment, Mr. Chairman, there seems to be an intent to expand the rights of States to participate in the decisionmaking process with regard to siting, developing, constructing, and operating nuclear waste repositories, but my reading of the language indicates that in spite of that intent, there may be a limitation of States participation rights if this amendment is adopted.

I would suggest that a very careful review needs to be undertaken by the subcommittee of that language. What worries me most is the use of the term "exclusive rights." The amendment proposes to establish certain exclusive rights, specifically those provided in sections 115, 116, 117, and 118 of the Nuclear Waste Policy Act with the exception of any recognized rights under existing law.

Those are rights that are specified. They give the State the right to have access to timely and complete information, for example, of plans on site characterization, development, and design, the right to be consulted, and there is no doubt that these rights are crucial for any State in which a repository is proposed, but should they be considered as the exclusive rights of the States to participate in planning and siting and constructing, then I think that would be very objectionable.

And the reasons for that include the following, that this could potentially deprive the States of an important participation right provided in other sections of the act. In section 112, for example, there is a very important right that is given to the States to review and comment on the environmental assessments, which provide the basis for the recommendations for site characterization.

This section permits the States to participate in local public hearings on the environmental assessments. It entitles them to notification of site nomination. It appears to me therefore that this ammendement would abrogate those important rights of participa-

tion. Also, the amendment could prohibit the Department of Energy from exercising the discretion to allow State review and participation not required by law.

The Department of Energy has undertaken on a voluntary basis to permit review by the States of the draft chapters of the environmental assessment. This action is welcomed, especially because in some instances in the past there seems to have been a factual withholding of policy information and some delays in providing information to States. And I think it is an indication of the Department's interest to cooperate to see that there is an encouragement of sharing of information.

Finally, the amendment could render ineffective any State law not in effect at the time of the enactment of the Nuclear Waste Policy Act, and that worries me, Mr. Chairman. Our State enacted statutes since the passage of the act that would be applicable to the siting and construction of a repository in the State. Permits would be required under new State laws for transportation of nuclear waste. That is an important exercise of State power that could be abrogated and specifically prohibited if this amendment is approved.

I think that the heart of any consideration should be the tendency on the part of Congress to encourage more participation by the States in the process, Mr. Chairman. So I am hoping we would not adopt or your subcommittee would not recommend the adoption of any change in Federal law which would give a signal that the Federal Government is not interested in State participation. The fact of the matter is that in the Nuclear Waste Policy Act, every effort was made to give States a right to participate, give the public the right to have documents reviewed for the purpose of satisfying themselves that every effort was being made to safeguard the welfare and safety of the general public, particularly in a State where there was a possibility that a site could be selected.

So, Mr. Chairman, those are some of my concerns that I wanted to express to the subcommittee. I really appreciate your inviting me to be here today and to testify. I think that we ought to also have hearings—I do not know whether this is your subcommittee's responsibility or maybe some other subcommittee's responsibility—have hearings on the mission plan. I know that was a subject of some notice that said there could be a discussion of that at this hearing and I will not presume to undertake a discussion of it, but just to say that there are some very real concerns about the mission plan in my State, particularly if this is going to serve as a factual basis for further decisionmaking with respect to siting of a repository. There are some instances in the mission plan where there is not a full accurate reflection of relevant material that ought to be considered in that process, and that concerns me and it concerns my State officials too.

I have some statements which I would like to have included as an addendum to my testimony, a statement of policy of the State of Mississippi and a letter from the Department of Energy and Transportation giving a description of some concerns on the part of State government. If I could have those included in the record, Mr. Chairman, along with some statements of citizens in the State of Mississippi, I would appreciate it very much.

Senator DOMENICI. They will be made a part of the record.

[The prepared statement and additional material submitted by Senator Cochran follow:]

STATEMENT OF THAD COCHRAN
UNITED STATES SENATOR

Mr. Chairman, I appreciate the opportunity to present to the Subcommittee on Energy Research and Development my views, and those of Mississippians, in opposition to the proposed Stafford Amendment to the Nuclear Waste Policy Act.

The Stafford Amendment proposes to establish as the exclusive rights of participation by an affected State or Indian Tribe in the planning, siting, development, construction, and operation of a repository, the rights provided in Sections 115, 116, 117, and 118 of the Nuclear Waste Policy Act, with the exception of any recognized right under existing law.

The intended thrust of this amendment seems to be the expansion of state participation rights by providing for the federal recognition of state laws in effect at the time of enactment of the Nuclear Waste Policy Act.

I am concerned, however, that passage of the amendment will result in the unintended restriction of state participation rights by establishing certain "exclusive rights." I do not believe that Congress intends these rights to be exclusive.

The rights set forth in Sections 115 - 118 include:
--the right of a State or Indian Tribe to submit to the Congress its notice of disapproval of a repository site designation located in such state or reservation;
--the right to financial and technical assistance to review and monitor site characterization activities and to mitigate the impact on the state of the construction of a repository;
--the right to timely and complete information regarding determinations and plans on site characterization, development, and design; and

--the right to be consulted about public health and safety, as well as environmental, social, and economic concerns.

There is no doubt that these rights are important to any state in which a repository is being considered. But should they constitute the exclusive rights, or only rights, of the states to participate in the planning, siting, developing, constructing, and operating a repository or monitored, retrievable storage facility? I think not, and, therefore, I must object to the Stafford Amendment for the following reasons.

First, the amendment could potentially deprive the states of important participation rights provided in other sections of the Act.

Section 112, for example, contains the very important right of the states to review the Environmental Assessments, which will provide the basis for the recommendations for site characterization. This section permits the states to participate in local public hearings on the Environmental Assessments and entitles them to notification of site nomination and the basis for such nomination prior to nomination by the Secretary. It appears that, on its face, this amendment will abrogate these important rights.

Secondly, the amendment could prohibit the Department of Energy from exercising the discretion to allow state review and particiaption not required by law.

The Department of Energy has recently undertaken, on a voluntary basis, to permit early review by the states of the draft chapters of the Environmental Assessments. This action is welcomed in view of past instances of withholding of policy information and technical data by the Department. The Department should cooperate with the states by providing timely

information to them. The exchange of information is to be encouraged. The Stafford Amendment could preclude such action by the Department.

Finally, the amendment could render ineffective any state law not in effect at the time of enactment of the Nuclear Waste Policy Act.

Many states, including Mississippi, have enacted Statutes since the passage of the Act that would be applicable to the siting and construction of a repository in the state. Mississippi has enacted statutory permit requirements for the transportation of nuclear waste. This statute and others were enacted pursuant to the State's legitimate interest in protecting the health and safety of the public. Whether passed prior to or after enactment of the Act, these statutes should be respected by the Federal Government. The Stafford Amendment may jeopardize the effectiveness of these statutes.

Mr. Chairman, at the heart of any consideration of this amendment by the Congress is the right of a state and its citizens to be informed about the Federal Government's activities that may result in the recommendation of that state to host a nuclear waste facility. The right to participate in, comment upon, and be consulted about every phase from study and selection to construction and operation of a nuclear waste facility is of the greatest concern to the citizens of Mississippi, and to me.

The Congress has specifically recognized the importance of state participation, declaring in the Findings of the Nuclear Waste Policy Act that, "State and Public participation in the planning and development of repositories is essential in order to promote public confidence in the safety of disposal of such waste and

spent fuel."

I am concerned that the Subcommittee is considering legislation which will restrict the states' opportunities to participate, and I am distressed that the Department is not doing more to facilitate participation by the states. Mississippi State officials have advised me that there continues to be a reluctance by the Department of Energy to respond in a timely manner to requests for documents and information or to share technical data. I am told that major decisions and policy changes have been made public without first consulting or notifying state or local officials. Just recently, Department officials indicated that no Site Recommendation Report will be issued, despite previous affirmations that the states would have the opportunity to review this report and contribute to the development of the decision methodology prior to its transmittal to the President.

Actions such as these have added weight to the belief that the selection of a nuclear waste repository may be based not on scientific data or a thorough consideration of hydrology, geophysics, water supplies, population, and the other factors identified to ensure that the site selected will not endanger the public health and safety, but rather, on political considerations.

The public is fearful, and rightly so, that the Department of Energy may choose the path of least resistence and recommend a site where there is less visible and vocal opposition.

Mr. Chairman, should it be unclear to Department Officials and the Congress, let me state for the record the unqualified opposition of the State of Mississippi to the selection of either the Richton or Cypress Creek Salt domes as a nuclear

waste facility. It is the firm belief of State officials that the population language of the Act clearly disqualifies the Richton site and, further, the scientific data, if properly weighed and considered, will disqualify both salt domes from consideration.

I have a statement from our state government on this issue and I ask that it be placed in the hearing record.

Actions to impede state participation create fear, doubt, and suspicion in the minds of the public with regard to the credibility of Department officials, their ability to administer the Act, and their intention to do so fairly and equitably.

The tasks of selecting a site and constructing a nuclear waste storage facility are so important that decisions must be based on sound scientific data. They must also be undertaken with full participation by the states and the public -- nothing less. Any amendment that will restrict the rights of the states will undermine the integrity of the selection process.

Mr. Chairman, before I conclude, let me add that the Department of Energy is in the process of finalizing its Mission Plan for the Civilian Radioactive Waste Management Program. This Mission Plan comprises the Department's overall plan for managing nuclear waste and proposes strategies for long and short-term storage, retrievable storage, transportation, and other aspects of the program. The draft of the plan has been circulated for public comment, and the officials and citizens of Mississippi have raised important questions and pinpointed serious deficiencies in it that I believe must be addressed by the Department.

Of particular importance to Mississippi officials is the failure of the Mission Plan to address and describe in detail

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the site recommendation decision mehtodology, to clearly state the Department's intention as to how many of the three sites must be qualified at the completion of site characterization, and to discuss the possibility and outline the procedures for co-locating defense and civilian waste.

I have with me copies of the comments of the Mississippi Department of Energy and Transportation, Mrs. Dorthy Cole, a member of the Perry County Citizens Against Nuclear Disposal, Inc., and Mr. Donald F. X. Finn, another interested citizen. These comments are representative of the concerns of many Mississippians, and I ask that these, too, be made a part of the record.

This fall, Congress will have the opportunity to review the final Mission Plan. I urge this Subcommittee to schedule oversight hearings on the Mission Plan as soon as possible to obtain the comments of the candidate states and communities.

Mr. Chairman, let me conclude by emphasizing again the necessity for encouraging open, positive communication between the Department and the candidate states, and for increasing state participation in the selection process.

The officials of my State of Mississippi have advised me of their opposition to the Stafford Amendment. I understand that the States of Texas and Utah and the National Governors Association are also opposed to the amendment. I urge this Subcommittee to reject it.

IT IS THE POLICY OF THE STATE OF MISSISSIPPI THAT NUCLEAR WASTE NOT BE STORED IN ANY GEOLOGIC FORMATION IN THE STATE OF MISSISSIPPI.

A. The State of Mississippi is opposed to the depositing of nuclear waste in Mississippi because it would create hazards to the health, safety, and welfare of the people of the State of Mississippi.

1. It is a primary responsibility of the State of Mississippi to protect the health, safety, and welfare of its citizens.

2. It has not been technically demonstrated to the satisfaction of technical representatives of the State of Mississippi and elsewhere that a repository can be located in Mississippi safely so as to not interfere with or create hazards for the health, safety, and welfare of the people of the State of Mississippi.

3. There have not been adequate responses by the Department of Energy to technical and policy questions raised by the State of Mississippi relative to the location of a nuclear waste repository in the State of Mississippi.

4. There has been a lack of cooperation and a lack of transfer of information relative to the location of a nuclear waste facility in Mississippi so that those responsible for the health, safety, and welfare of the people of the State of Mississippi cannot make adequate and sufficient judgments as to the protection of its citizens.

5. It has been clearly stated by the Governor, Attorney General, and the Legislature of this State, as representatives of the people of this State, that this State opposes the placement of nuclear waste in the State of Mississippi.

DEPARTMENT OF ENERGY & TRANSPORTATION
Watkins Building, 510 George Street
Jackson, Mississippi 39202-3096
601/961-4733

July 9, 1984

Mr. Charles R. Head, Acting Director
Operations Division, Office of Civilian
Radioactive Waste Management
U. S. Department of Energy, RW-13
Forrestal Building
1000 Independence Avenue, S. W.
Washington, D. C. 20585

Re: State of Mississippi preliminary comments on DOE/RW-0005 DRAFT, Mission Plan for the Civilian Radioactive Waste Management Program

Dear Mr. Head:

Please accept for the record these preliminary comments on the April 1984 Draft Mission Plan. Several agencies of the State of Mississippi, as well as members of the Nuclear Waste Policy Advisory Council and citizens of this state, have developed additional comments on the Mission Plan which are attached to this letter as our interim final comments.

Through this correspondence, I intend to address only two of the more significant issues in the Mission Plan on which the state has comments. The intent of the State of Mississippi in submitting these comments is to as precisely as possible identify some of the areas of objection and/or concern we have with the Draft Mission Plan. This is in keeping with the requirements of Section 301.(b)(3) of the Nuclear Waste Policy Act of 1982. The first issue concerns the lack of description of the methodology by which the site recommendation process will be accomplished. The latter concerns the issue of the number of qualified sites from which to choose a candidate for a Construction Authorization Application.

This state has been on the record on several occasions appealing to the Department to develop and publish for comment the methodology to be utilized in recommending from among sites nominated pursuant to Section 112.b(1) of the Act, those sites to be characterized in detail. Section 301.(a)(3) of the Act requires "an evaluation of...institutional problems that may impede implementation of this Act..." It is the considered opinion of the State of Mississippi that the Mission Plan should address and describe in detail the site recommendation decision methodology. The Mission Plan fails to address the issue, and for that reason the state officially objects to such an omission.

The second issue upon which comments are submitted deals with an issue which we are in disagreement with the Department. Volume I of the Mission Plan has a treatise on the Repository-Program Approach. What is lacking in the Mission Plan site selection process is whether the Department must characterize and qualify three sites. It would appear that Section 114(f) of the Act requires "For purposes of complying with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 1321 et seq) and this Section, the Secretary shall consider as alternate sites for the first repository to be developed under this subtitle three candidate sites with respect to which (1) site characterization has been completed under Section 113, and (2) the Secretary has made a preliminary determination that such sites are suitable for development as repositories consistent with the guidelines promulgated under Section 112(a)" (emphasis added). The Mission Plan must be made clear as to the Department's intent as to how many of the three sites must be qualified at the completion of site characterization.

Thank you for this opportunity to submit these comments for your perusal and response.

Very truly yours,

Wilbur G. Ball

Wilbur G. Ball
Executive Director

Enclosures
WGB:fnp

MEMORANDUM

TO: Ron Forsythe, Nuclear Waste Program Manager

FROM: Ken Goodwin, Chairman
Nuclear Waste Technical Review Committee
Mission Plan Subcommittee

DATE: July 6, 1984

SUBJECT: Review of Civilian Radioactive Waste Management Mission Plan, Volumes I and II

The comments presented here have been hastily put together to meet the DOE review deadline. Comments were previously submitted on Volume I and many are still applicable. The comments are divided into a general category and a page-by-page review.

GENERAL

1. The report is not specific. It is a collection of alternatives. It uses many vague words and disclaimers such as appropriate, reasonable, fair, equitable, etc. It contains more information about possibilities than plans.

2. The organization of the report is very mixed and confusing. The first repository is a project in itself and should have a Mission Plan separate from the second repository, interim storage, or an MRS.

3. Socioeconomic impact is not considered as a key issue, which follows past efforts of the federal program. People are not its primary focus.

4. The technical plan lacks details, particularly on salt. Considerably more detail is presented for tuff and basalt, yet statements are made that salt has the most research and technology available.

5. Many statements are written to appear conclusive to the reader when, in fact, they are backed up by only limited data and study.

6. The MRS siting is glossed over as being a simple process with few time delays when, in fact, it may be almost as difficult to site as a repository.

7. This report presents the first mention of two shafts being built during site characterization, which raises the question as to whether the repository will be located without the benefit of final design information and NRC approval.

8. The report contains no mention of specific procedures for negotiation of a consultation and concurrence agreement with the States.

9. The report contains no plan or explanation of exactly what the surface facilities will consist of or how they will be operated.

DETAILED PAGE-BY-PAGE CRITIQUE, VOLUME I

1. "These spent fuel assemblies are highly radioactive and must be isolated from the biosphere." This statement should also provide for the possibility of reuse through reprocessing. (Page 1-1)

2. The statement is made that DOE will regularly update the document and all revisions will be subject to State review. This is a good statement. (Page 1-2)

3. The statement is made that NRC standards will be used for defense waste, but it is implied that NRC will not have control. This is unacceptable. (Page 2-3)

4. A quote from the Act is given as follows: "State and public participation in the planning and development of repositories is essential in order to promote public confidence in the safety of disposal of such waste and spent fuel...." No mention is made of the current level of public confidence or that it has rapidly decreased since the start of the program. (Page 2-7)

5. It is questioned as to why new at-reactor pools could not be constructed to provide for additional interim storage. This would provide for no additional areas of potential contamination. (Page 2-9)

6. A statement is made under transportation that "much of the institutional framework (e.g., regulations and regulatory bodies) necessary to support these shipments already exist." I question their adequacy in light of regular problems with hazardous waste and the general inadequacies of our surface transportation system, e.g., overstressed bridges, regular derailments, etc. (Page 2-11)

7. It is questioned whether transportation contracts will be bid or negotiated. Do we want to trust the care of such a controversial item to the lowest bidder, who may have to bend the rules to make a profit? (Page 2-12)

8. The statement is made, "The principal concept of geologic disposal is to isolate the waste from the human environment without long-term dependence on the continued existence of contemporary institutions." Is this a practical concept based on how quickly technology changes and the potential reuse of the material, particularly spent fuel which has not been re-processed? (Page 3-A-1)

9. The following statement is made: "...environmental impact statement which concluded that geologic disposal is safe, environmentally sound, and the technology is at hand." This statement has no basis for such a conclusion. (Page 3-A-1)

10. It is mentioned that the repository must isolate the waste for 10,000 years, and yet we talk about 1,000-year existing groundwater travel time as being necessary. These appear to be inconsistent standards. We should be predicting future groundwater movement with heavy water withdrawals. (Page 3-A-7)

11. In item 4b, the words "at least" should be removed to be consistent with other parts of the report. The statement should read that three sites will be characterized. (Page 3-A-7)

12. A public confidence objective should be added to the mission and objectives section. (Page 3-A-7)

13. Under the basic questions to be answered regarding the suitability of a site for a geologic repository (Page 3-A-9), the following additional questions should be included:

    a. Can a surface facility be designed, constructed and operated to provide reasonable health protection to the citizens of the area, when compared to potential health effects in other areas?

    b. Can transportation to the site be provided with less health effects than other potential sites?

    c. Can the groundwater system be better protected from contamination at this site compared to other potential sites?

14. The site screening for the first repository was a very poor process. It did not include all the alternatives, i.e., granites, clays, etc. It did not use population, transportation, or hydrologic conditions as criteria. Parameters were inconsistently applied, levels of data were not comparable. (Pages 3-A-9, 3-A-10)

15. The results of technology development and system studies are highly speculative and require many assumptions which may be closer to guesses because of the future time period involved. Why are separate independent studies not used for verification? (Page 3-A-15)

16 It is questioned as to how the Peer Review Panel will be selected. (Page 3-A-15)

17. The consultation and cooperation process has had very poor results to date, and quality information programs have been lacking. This is not indicated in the material presented. (Page 3-A-18)

18. The socioeconomic accomplishments to date are overstated. (Page 3-A-18)

19. Table III-A-1 states, "DOE submits site recommendation reports to the President." There has been some past discussion that a site recommendation report would not be prepared. Is the statement true? (Page 3-A-28)

20. The statement is made that the MRS "concept should rely upon engineered features for safety and not upon geologic and geographic features that would restrict siting options." This is a very poor statement and engineering, geological, and geographic features should be considered. (Page 3-13-3)

21. The statements made relative to MRS siting are naive and inaccurate, and they illustrate a lack of understanding of nuclear facility siting given the current mood of the country toward nuclear facilities. To place labor rates as a major, let alone the controlling factor, is absurd. (Page 3-B-8)

22. The statement is made, "Routing of nuclear waste shipments is a primary concern of state, local, and tribal officials." Does this mean that federal officials will not be concerned with routing? (Page 3-C-2)

23. No mention is made under transportation of standards for vehicles and equipment, highway and rail facilities, or personnel qualifications and training. (Page 3-C-8)

24. The Nuclear Waste Program has a history of a very temporary and unstable organization in both personnel and contractors. A permanent management system is a necessity. Many decisions are currently being made by acting and temporary staff. (Pages 4-6, 4-7, 4-8, 4-9)

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PAGE-BY-PAGE CRITIQUE, VOLUME II

1. The statement is made, "Most of the issues are related to the geologic, hydrologic, and geochemical characteristics of the repository site and other aspects of the natural environment." People and their socioeconomic considerations are again left out and not considered important. (Page 1-2)

2. In the discussion of climatic change, the statement is made, "The changes are global; they involve reductions in temperature and evaporation, and increases in precipitation and runoff." Sea level fluctuation should have been included. (Page 1-9)

3. The statement is made, "However, even in evaporite formations like salt, dissolution is a potentially disruptive process that is not expected to affect the long-term performance of the repository." This is an incorrect statement and the word "not" must be removed. (Page 1-10)

4. The Richton, Mississippi, site is in the center of a belt of oil exploration that extends across southern Mississippi. It appears that little consideration was given to this factor. (Page 1-13)

5. The environmental quality such as air and water quality must be forecast into the future, rather than relying exclusively on present information. Methods of data collection and interpretation should be presented. (Page 1-17)

6. The word "competent" should be replaced with the word "suitable" in line 4.3.1. (Page 1-21)

7. The logic diagram for site investigation (Figure 2-2) indicates that some borehole data and testing may not be available for preparation of the Site Characterization Plan. Supporting data should be available before shaft location is selected. (Page 2-6)

8. Under the heading, Dissolution, the potential dissolution at the salt-caprock interface at salt domes was not mentioned. (Page 2-11)

9. Different shaft diameters are shown for salt, tuff, and basalt. Why? (Pages 2-17, 2-18)

10. More information is needed on why the difference in time for shafts in basalt, tuff, and salt. Also, why are the tests to be performed so differently? (Pages 2-20, 2-21)

11. The eight-month testing program in salt is not adequate to predict performance for 10,000 years. (Page 2-21)

MEMO: Ron Forsythe
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12. "In FY 84, emphasis is being placed on developing a sufficient data base of physical properties in order to relatively compare the seven salt sites from a geoengineering perspective." Any comparative data is important and good. (Page 2-25)

13. More information is needed on how seals will be tested for 10,000-year performance. The statement about sealing technology is incorrect as we have no history of long-term sealing. (Page 2-29)

14. "Spent fuel in the form of intact fuel rods with metal cladding is considered to be an acceptable waste form for the repository." This is the first mention in the Mission Plan of intact fuel rods being placed in a repository. How does its safety compare with other factors such as glass, etc.? (Page 2-30)

15. Is disturbed salt an adequate backfill? How has it been tested? (Page 2-36)

16. Under "System Engineering," a sixth item of basic information on each element should identify the weakest link of that element. (Page 2-39)

17. The preliminary safety analysis report is mentioned for the first time and, if it is properly prepared, should be a major factor in obtaining public confidence. (Page 2-44)

18. Land acquisition methods are presented and they are the traditional federal procedures including the use of condemnation. These procedures are not acceptable and will not help develop public confidence. (Page 2-44)

19. The first draft of Volume I of the Mission Plan indicated that State permits would be obtained. This report is hedging on this issue, indicating that they may take issue with some permits and State laws. (Page 3-7)

20. The current public information program is inadequate and the Mission Plan should indicate how it will be operated and how results will be tested. (Page 3-9)

21. Much detail is unknown about the Richton Salt Dome, including configuration of the caprock, dome dissolution, and saline anomolies. The dome is partially under the town of Richton, but the area studied has been offset from the town to obtain the distances required by law. This presents the problem of future expansion under the town as greater capacity is needed. (Page 5-6)

22. "Mineral exploration directly over the dome has included a sulfur exploration program which involved boreholes into the caprock. (LETCO, 1982a)." Some of these boreholes penetrated the salt stock. (Page 5-9)

23. Under "Salt Dome Pathways" is the statement, "Figure 5-11 is a simplification of the possible scenarios of release from the Richton dome to the various aquifer units." Figure 5-11 and the referenced paragraph are, in fact, grossly misleading representations of the geohyrdologic system around Richton. The fact that pathways along the dome sheath, vertically along radial and rim faults, along well casings, and along other pathways now utilized by the existing dissolution plume is purposely ignored. (Pages 5-30, 5-31, 5-32)

24. "Furthermore, because of their high salinities, the waters associated with salt deposits are not normally attractive for domestic and industrial uses." This is not true; potable water exists in the vicinity of the dome. (Page 5-59)

25. The validity of the discussion on groundwater around the salt dome at the top of page 5-60 is questioned. We do not believe the data will support the conclusions presented. (Page 5-60)

26. Table 5-4, in a purported attempt to list advantages and disadvantages of salt, ignores radial and rim faulting, inclusion of potential aquifer material, migration pathways created by extensive drilling and mineral exploration, and the prolific groundwater environment, which are all commonly associated with salt domes of the Gulf Interior Region. A case in point is the historical forced abortion of an attempt at large-diameter borehole drilling into the Tatum Salt Dome near Richton and Cypress Creek domes in Mississippi. What documentation on large-diameter borehole drilling through water-bearing strata is presently available? The lists presented are incomplete and many of the disadvantages for basalt and tuff are the same as in salt, but were left out. (Page 5-62)

27. The town of Richton is said to be two miles from the dome when, in fact, it is over the top of the dome and the area of investigation was offset to obtain the needed distance from a populated area. (Page 7-10)

28. In choosing a site, a mutual plan should be worked out with local authorities to best benefit all concerned. (Page 7-18)

29. It is said that a test and evaluation facility would not have socio-economic impacts. This is not true. It is nuclear waste and this will cause impact as long as the mood of the county is in its present state about nuclear facilities and their danger. (Page 11-1)

30. Under "Demographic Effects" of a repository, out-migration of long-term residents should be considered. (Page 11-1)

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31. Under "Economic Impacts," short- and long-term impacts should be considered as well as the problems and needs of in-migrating families. It is possible that wage rates will be driven up to a point that many people in existing businesses will be driven out of business and newcomers take over. (Page 11-2)

32. Under "Social Impacts", there is little mention of the fear factor which is the source of much opposition. (Pages 11-4, 11-5)

33. The entire socioeconomic section is written as a conventional construction project and does not take into account the effects resulting from perceived danger or catastrophic disaster. (Pages 11-1 through 11-6)

Thie report is submitted by the Mission Plan Subcommittee, composed of:

Ken Goodwin, Mississippi Department of Economic Development
Bobby Redding, Mississippi Department of Health
Mike Bograd, Mississippi Department of Natural Resources
Phil Pepper, Mississippi Research and Development Center
Ron Forsythe, Mississippi Department of Energy and Transportation
Bob Woolsey, Mississippi Mineral Resources Institute.

Mr. Forsythe and Dr. Woolsey were unable to attend the critique discussions, but they will submit separate comments.

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DEPARTMENT OF ENERGY & TRANSPORTATION

MEMORANDUM

TO: Ron Forsythe, Nuclear Waste Manager DATE: June 29, 1984

FROM: Kelly A. Haggard, Nuclear Waste Specialist KAH

SUBJECT: Mission Plan

This version of the Mission Plan was organized much better and much more readable than the first draft we received. Some of the concepts DOE has developed are an improvement but they still do not anticipate legal challenges that may delay their schedule. The following are my comments on Volume I, listed by page number:

1. (Page 1-1) The Mission Plan states "The Act requires the Department of Energy to site, license and operate repositories..." DOE does not license a repository. It should read "obtain a license". The same statement is made in the first program objective on the same page.

2. (Page 1-2) I concur in the last sentence where DOE states all revisions will be subjected to a full review by the public, State, Indian tribes, and Congress.

3. (Page 2-3) One of the principles DOE is using as a planning basis relative to the potential receipt of defense waste involves dedicating the receiving facility of the first phase of the initial repository to receipt of defense waste. This concerns me because a defense repository does not have to be licensed. Even though DOE states it will be required to meet the standards necessary to be compatible with licensing of the repository by the NRC, the fact still remains that it does not have to be licensed. The first phase of repository construction could begin without a license.

4. (Page 2-4), second paragraph) Will a reprocessing plant be located at the repository? This decision needs to be made. Risk analysis will be totally different if a reprocessing plant is located at the repository. This could effect the selection processes.

5. (Page 2-7) The last paragraph says DOE will provide mechanisms for (b) Consultation on key draft documents. Why should consultation take place on just <u>key</u> documents?

6. (Page 2-8) When and on what basis was the decision made to colocate a Test and Evaluation Facility at the repository? There should be a reference.

7. (Page 2-11) How will those States on the transportation routes be involved? Will DOE provide funding to these States?

8. (Page 3-A-7) One of DOE's objectives is to recommend at least three sites for site characterization. The Act says three period.

9. (Page 3-A-10) The Mission Plan says field and laboratory testing was underway at all nine sites when the Act was passed. This was not the case in Mississippi unless DOE violated the moratorium.

10. (Page 3-A-17) The emplacement hole packing mixtures being considered for basalt and tuff were given, but not for salt.

11. (Page 3-A-20) How will DOE select the three sites for characterization from the five nominated? The Mission Plan just states that three sites will be recommended. Isn't it about time DOE decides how they will get to the three?

12. (Page 3-A-21) The results of characterization work and any changes to the site characterization plan will be shared with affected parties but will the States be allowed to comment on them or at least consult with DOE on the results?

13. (Page 3-A-23) Postclosure monitoring or surveillance will be installed as necessary. What does "as necessary" mean? Certainly DOE is not considering a lack of monitoring.

14. (Page 3-A-26) Under Consultation and Cooperation part (c) it is stated "Consultation on the decision process for recommending sites for detailed characterization." I hope this plan will take place.

15. (Page 3-A-26) Will impact mitigation cover those impacts that have occurred prior to site characterization? Will the socioeconomic impacts be monitored after closure of the repository?

16. (Page 3-A-32) Case 2-A is unrealistic. Sound decisions cannot be made with incomplete data. Public confidence in the program would drop even further.

17. (Page 3-A-32) Case 2-B assumes 8 months of in situ testing in salt. Why is there a one year difference in the testing time for salt and tuff or basalt? From where do these numbers come? There should be a reference here.

18. (Page 3-A-33) The time when a preliminary finding of the suitability of a site as a repository is made by the Secretary should be changed to conform with the new Guidelines decision made at the NRC Concurrence Hearings on June 22, 1984.

19. (Page 3-A-40) The assumption that there will be no notice of disapproval by a State or affected Indian tribe is unrealistic.

20. (Page 3-A-40) NRC has already indicated it will take longer than 3 years to issue a construction authorization. At least 4 years should be used in the reference schedule.

21. (Page 3-A-43) Alternative Schedule 4 should not even be considered. A two-step construction authorization approach is unrealistic for a first-of-its-kind facility.

22. (Page 3-A-43) DOE believes it is inappropriate to anticipate any legal challenges. I question this belief. The nuclear industry has always been challenged. What makes DOE think this program would be any different?

23. (Page 3-B-1) DOE's approach of continuing with the plans for an MRS even though the decision to construct an MRS won't be made until a later date is a good approach. It is better to be prepared than not.

24. (Page 3-C-4) More detail needs to be given concerning the involvement of those States on the transportation routes.

These are my comments at this time. Further comments will be given at a later date.

MISSISSIPPI MINERAL RESOURCES INSTITUTE

COMMENTS ON THE MISSION PLAN FOR THE CIVILIAN RADIOACTIVE WASTE MANAGEMENT PROGRAM - APRIL, 1984 DRAFT

Many of our comments on the Mission Plan reflect our concern that there has apparently been less data collected and fewer studies made in salt than on basalt and tuff. We realize that reasons for this are likely many and varied, but we want to emphasize that this inequity should be rectified for any salt site(s) during the characterization phase. Since the salt site(s) will be chosen for characterization with less information in hand, we think it/they may require more intensive investigation to equalize the data bases prior to final site recommendation.

Mission Plan, Volume II

Issue	Comments
1.5	page 1-9 "Will future climatic conditions at a site lead to radionuclide releases greater than those allowed by regulations?" ONWI-120 reports typical supradomal elevations at Richton dome to be 160-190' above sea level (p. 13-24) and at Cypress Creek dome to be 180-270' above sea level (p. 13-16). ONWI-278 (p. 6) reports that the expected eustatic rises in sea level resulting from total melting of glacial ice is 270'(Lamb, 1971) or 360'(Andrews, 1975). Consideration of the possibility of marine inundation associated with drastic sea level fluctuations is needed.
1.6	page 1-10 "Will any subsurface rock dissolution within the geologic setting of the site lead to radionuclide releases greater than those allowed by regulations?" The Siting Guidelines (April, 1984) Subpart C, Section 960, 4-2-6(d) state: "The site shall be disqualified if it is likely that during the first 10,000 years after closure, active dissolution, as predicted on the basis of the geologic record, would result in a loss of waste isolation." ONWI-109, Section 5.2.2.4 states: "Evidence of dissolution, no matter how slight, represents a complexity that will be an issue in licensing and will increase the amount of effort required in the characterization process." Dissolution is a process ultimately associated with salt domes and merits more attentive consideration than is reflected by the Mission Plan.

Section	Comments
2.2.1.1	Tectonics; page 2-3
2.2.1.5	Dissolution; page 2-11
2.2.2	Hydrologic Studies; page 2-12 These are all examples of areas in which unequal emphasis has been given to the various salt sites under consideration for selection for characterization.
2.3.3	Testing; paragraph 4, page 2-21 "The in situ test program [in Basalt] is scheduled to start in May, 1987 and continue for approximately 24 to 29 months." paragraphs 5 and 6, page 2-21 "Current plans call for a site - suitability testing program of 8 months.....Detailed plans for the salt in situ test program are being developed in FY84 and will be revised after site selection in mid-FY85." paragraph 7, page 2-22 "The testing program in tuff is expected to take about 31 months beginning the last quarter of FY87." The Mission Plan does not define site - suitability testing. Is site - suitability testing synonymous with in situ testing? If so, we feel the estimated 8-month testing program will not be enough time to gather adequate information to be used for possible site recommendation.
2.5.2.1	Waste-Form Testing; page 2-33
2.5.2.2	Testing of Canisters and Overpacks; page 2-34
2.5.3	Package Design and Fabrication; page 2-37
2.6.2.1	Waste - Package Performance; page 2-40 Each of these sections is devoted to the waste and its packaging in basalt, tuff, and salt. The majority of the information involves basalt site conditions. Tuff is considered to a lesser extent, while salt is given the least consideration of all. It is obvious here that there is a need for further extensive testing in the salt sites.
3.3.1	Potential Issues and Problems (Acquiring Access to, or control of, Land); paragraph 2, page 3-5 This paragraph emphasizes concerns over potential legal problems involving negotiations with private landowners and the Federal Government possibly being obligated to exercise its right of eminent domain. Such resulting condemnation proceedings could create delays in implementing the repository program.

Section	Comments
3.3.2	Plans for Resolution; paragraph 1, page 3-5 The Department proposes to deal with the preceeding problem (section 3.3.1) through usage of the Uniform Relocation Assistance and Real Estate Acquisition Act of 1970 which "provides the Department with the basis for making equitable and comprehensive financial arrangements with private landowners and tenants who must be displaced." The Department plans to "work closely" with the U. S. Army Corps of Engineers in the negotiation process with the land owners. The Corps of Engineers may use out-of-state appraisers. If the appraisers are from out-of-state or are not familiar with the area they may not be as aware as they should be of the emotional effects that the news of a possible nuclear waste site may have had on the people of the area. The possibility that a nuclear waste repository might be located in Perry County, Mississippi was first heard in the area several years ago and therefore a future estimate of property values may not reveal a true picture of either a decrease or an increase in the property values of the area which may be condemned. Therefore, use of out-of-state appraisers gives rise to a possible dispute as to whether they can be "equitable" and "comprehensive" in their appraisal. The use of the Corps of Engineers may serve to create the legal problems which the Department seeks to avoid through their use of the Corps.
5.2.2.1	Salt Domes; paragraph 2, page 5-6 The second paragraph contains several confusing statements. In relation to upward domal movement, sentence 2 states: "...with the vertical movement ceasing some 20 million years ago, in Miocene time." Sentence 3 states: "There is no evidence of current tectonism at the domes. " Sentence 4 states: "Some faults near the Richton Dome have been hypothesized to have had movements during the last 2 million years (the Quaternary Period)." Sentence 5 states: "Faults with similarly questionable activity are likely to be identified at the other two domes." Sentence 4 and 5 appear to contradict the statements made in sentences 2 and 3. We believe there is evidence for Quaternary faulting associated with the dome sites and feel that the DOE should clearly state its position and the basis for its conclusions. paragraph 9, page 5-9 Statements in this paragraph involving economic hydrocarbons at Cypress Creek are not clear. Sentence 1 states: "There is a small producing oil field on the edge of Cypress Creek Dome" (emphasis added). Yet sentence 3 states: "The potential for production of hydrocarbons is rated as poor to fair." If there is current hydrocarbon production at Cypress Creek, the potential for hydrocarbon production is 100 percent. This is a rating better than "poor to fair". The presence of one producing field also increases the potential of other fields being discovered by future exploration.

Section	Comments
5.3.2.4	Salt Domes; paragraph 1, page 5-29 Sentence 1 states that fresh groundwater near Richton and Cypress Creek "occurs in discontinuous, lenticular sand deposits that are interbedded with clay, marl, and limestone." This statement implies all near-dome aquifers are lenticular sand deposits. We feel this statement is too general and should be modified. Sentence 1 is almost a word-for-word quote from the first sentence of the abstract of Water Resources Investigation Report 83-4169, USGS, 1983, by C. B. Bentley. The exception is that Bentley added "primarily of Miocene age" to the end of the sentence. We believe this last phrase of Bentley's report is important and should be included in some form to limit the part of the stratigraphic column to be considered. Sentence 1 also implies that limestones are not aquifer Limestone beds often contain potable groundwater and should not be characterized in the manner of sentence 1. We feel that the amount of data collected on the hydrology of the salt dome sites is less than at other sites. If a salt dome site should be characterized, the DOE should focus additional work on the hydrologic settings to bring the amount of data on the domes to the same level as, for example, the basalt site. paragraph 3, page 5-30 Sentence 2 states that hydraulic conductivities have been estimated from about 200 tests in southern Mississippi. The type of tests are not specified nor is it clear if these data were gathered by the DOE or Spiers and Gandl(1980). We believe that the type of tests should be specified and a citation should be included as to where the original data may be found.
7.2.1	Safety and Programmatic Considerations for the Exploratory-Shaft Program; paragraph 9, page 7-15 "The second exploratory shaft at the selected site could be used as just such an access shaft and thereby accelerate repository construction."
7.5	Plans to Control Adverse Safety-Related Impacts; paragraph 2, page 7-17 "Both the boreholes and the exploratory shaft will have to be permanently filled and sealed." These statements both refer to the exploratory shaft used during site characterization, yet they appear to be contradictory. We feel this issue should be clarified.

crr
memo 8407051810

Comments on the Mission Plan for the Civilian Radioactive Waste Management Program submitted by the Mississippi Nuclear Waste Policy Advisory Council

While this version is an improvement over its predecessor in organization and clarity, it is found to be frequently inaccurate and still places more emphasis on meeting objects in a timely manner than on full State participation and human safety. Major flaws in the "Mission" are still glaringly obvious. The complexities of the transportation system are not yet addressed. D.O.E. could site a respoistory and be unable to transport the waste to it. There has been no significant progress in the development of above-ground waste system. No progress has been made in resolving the liability issue. Socioeconomic impacts are given little attention which is especially disturbing in light of the report of the panel established by the Board on Radioactive Waste Management (Social and Economic Aspects of Radioactive Waste Disposal). The possibility that none of the three sites be suitable is ignored. The most striking part of the Mission Plan, however, is how little the descriptions of the program to date resemble Mississippi's experience with the program.

Detailed Critique

Volume I

1) (Page 2-10) It is disturbing that D.O.E. still plans to take title at the site. It will complicate the liability question.

2) (Page 2-11) It is clear that the transporation system lags behind technical attention and progress.

3) (3-A-1) The above-ground design has not progressed beyond the original artist conception.

4) (Page 3-A-5) It is not enough to "obtain" comments. Comments should be given a full and complete response.

5) (3-A-7(4) Will data be generated only to "support" the siting decision?

6) The Background and Status sections are what should have been, not what was in Mississippi. There has been no field activity in this state in over two years. The area characterization studies were poorly done, and subsequently, Battelle dismissed the sub-contractor (LetCo). The U. S. Geological Survey seriously questioned the viability of dome salt.

7) (3-A-15) It is a surprise that engineering feasibility studies are nearly complete. Since salt domes differ from dome to dome, and since no field activity has taken place in Mississippi, how could truly feasible engineering studies applicable to Mississippi's domes be nearly complete?

8) (3-A-16) There has been no field activity in Mississippi.

9) (3-A-18) (i) Local and State libraries have not been well utilized in Mississippi. Information offices in Mississippi have been poorly located and disorganized. Documents obtained under the Freedom of Information Act demonstrate that D.O.E. has deliberately circumvented the State on numerous occasions.

(ii) The Socioeconomic Data Base Report for Mississippi is a superficial document based almost exclusively on census data.

10) (3-A-33(Case 2-D) If an exploratory shaft can't be successfully drilled because of rock instability or there is an inability to seal aquifers, why continue? The site is unsuitable.

11) What are the stages for site replacement? Will one of the five sites be resurrected? There is no scenario for zero (0) suitable sites.

12) (3-A-44) Congressional approval will be requested before a site is selected? This approach may be faster, but it is not logical.

Volume II

1) (5-9) How can the human intrusion rate be low after just describing how humans have already intruded the dome?

2) (5-29) Vertical transmissivity is not discussed. The 300 ft/yr rate computes to migration into the accessible environment in 20 years. It is interesting that the Bently Study is cited since Bently admits his estimates are the best he could do given the poor quality of the ERTEC work on which they are based. At any rate, the possible migration of radionuclides should be calculated at the fastest possible pathway, not an average.

3) (7-10) One-third (1/3) of Richton property is over the dome, not two (2) miles from the dome.

4) (Chapter 10) Costs do not include the cost of disposing of the mined salt. To pile salt mined from the site (as is shown in Fig. 3-A-1) would invite environmental disaster.

5) (Chapter 11) The major findings of the panel established by the Board of Radioactive Waste Management state well the shortcomings of this chapter.

June 14, 1984

Mr. Charles R. Head, Acting Director
Operations Division, Office of Civilian
Radioactive Waste Management
U. S. Department of Energy, RW-13
Washington, D. C. 20585

Dear Mr. Head:

We submit the following comments on the "Mission Plan for the Civilian Radioactive Waste Management Program" dated April 1984 for the consideration of your office:

1. The discussion on salt domes (p. 5-7/9, 5-62) fails to take into consideration the nature of the salt stock as an energy resource. See, e.g., C. H. Jacoby and D. R. Paul, 1974, Salt Domes as a Source of Geothermal Energy: 26 J. Mining Eng. 34.

The long-term availability of this energy resource is significant, and of course, is a factor to be taken into consideration in determining the value of any land that must be acquired for repository operations.

2. Consideration must also be given to suspected geothermal-geopressured resources that lie within the Mississippi Salt Dome Basin. See generally, Kamy Sepehrnooi et al., May 1983, Geopressured Geothermal Bibliography:Center for Energy Studies, University of Texas at Austin.

3. The Mission Plan should be reviewed in light of the report now available from the Office of Technological Assessment, U. S. Congress on the management of nuclear wastes. That report notes the need for a thorough peer review program. Neither the Mission Plan nor the Siting Guidelines provide any guidance to reviewers on the present nature, scope and operation of the DOE's peer review program. This is a critical failure.

4. We find the discussion on the DOE's "formal, documented Quality Assurance program" (p. 4-4) meaningless.

Sincerely yours,

Donald F. X. Finn

Donald F. X. Finn
P. O. Box 1623
Natchez MS USA 39120

601-442-1601

PERRY COUNTY CITIZENS AGAINST NUCLEAR DISPOSAL, INC.
POST OFFICE DRAWER G
RICHTON, MISSISSIPPI 39476
July 23, 1984

Senator Thad Cochran
Senate Office Building
Washington, D. C. 20510

Dear Senator Cochran:

As per your request when you were in Richton on July 20 we are enclosing some of our concerns relative to the nuclear waste storage issue in Perry County.

Thank you for interceding in our behalf when you testify to the subcommittee of the Senate Energy and Natural Resources Committee July 31 in Washington.

We do appreciate your continued support in the nuclear waste issue.

Sincerely

PERRY COUNTY CITIZENS AGAINST
NUCLEAR DISPOSAL, INC.

Dorothy G. Cole

Dorothy G. Cole, President

DGC/deh
enc:

TRANSPORTATION CONCERNS:

RE: Social and Economic Aspects of Radioactive Waste Disposal-Consideration for Institutional Management: National Academy of Sciences Press: 2101 Constitution Avenue N.W., Washington, D. C. 20418: Library of Congress no. 84-60101.

Transport Mode:

DOE'S planning assumed that as much as 90 percent of spent fuel would be moved by rail rather than truck (DOE-EIS-0046F 1980, Chapter 4.5)

The Association of American Railrods has informally indicated that its members would prefer not to handle spent-fuel shipments as normal or expedited freight. The primary concerns of the railroads, as described recently by Sandia Laboratories (Klassen 1982) are: (1) as long as there are any conceivable accident situations that could lead to cask failure, the casks are not safe enough to be transported by ordinary trains; (2) in the event of an accident, the Price-Anderson Act and existing insurance might not provide an adequate amount of liability insurance protection; and (3) an accident might lead to a prolonged shutdown of all transport operations because of delay by nuclear regulatory authorities in reopening the track.

The total number of truck shipments in such a system would increase at a rate of about 500 loads per year to a level of about 9000 shortly after the turn of the century (about one per hour).

Accidents of a radioactive and nonradioactive nature will happen in all the systems reviewed here and have the potential of eliciting considerable media attention. Here again, the transport mode will be relevant: a truck dominated system would have the greater number of accidents and total fatalities, but rail accidents have the potential for greater loss of life and economic cost for a single event (Norton 1981)

.....the damages from successful sabotage of a shipment in a densely populated area could rise to $2 billion to $3 billion.

DOT in 1981 published guidelines to become effective in February 1982 that would have the effect of preempting certain state and local laws. The regulation, "HM-164," addresses only highway shipment of radioactive materials. HM-164 has been criticized by states because of its attempt to delineate by regulation restrictions on state and local police power actions. Moreover, HM-164 assigns to the states key responsibility for emergency planning and enforcement of regulations. States would like the federal government to assume these responsibilities and implement them by providing technical assistance, quidance, and financial support.

1: The railroad has been discontinued between Laurel and Richton. Which would mean that if Richton becomes a repository then the designated route of highway I59 to Laurel and State HW15 from Laurel to Richton would be used for truck shipments.

2: Because of the fact that the repository site would become "the end of the transportation funnel" and vulnerability to possible transport-system bottlenecks, would the people near the site be exposed to greater releases of radiation?

3: It is our opinion that the Federal Government should accept full liability for any and all accidents relative to nuclear waste transportation and that the Price-Anderson Act and existing insurance be increased and defined to provide adequate amount of liability insurance protection, to cover nuclear waste transportation accidents and/or sabotage.

4: We feel that the Federal Government should accept the responsibility for emergency planning and enforcement of regulations, and implement the states by providing technical assistance, quidance, and financial support.

These extensive studies will require two large-diameter mine shafts to be excavated in the three sites selected in January 1985. Federal law requires that there be three "qualified" sites; that is, sites which are suitable for development as repositories from which the first repository is selected. The State of Mississippi requested that the Department of Energy state at what point of site characterization the "qualified" sites will be named - before characterization, during the studies, or after completion of characterization.

The sites will be narrowed from nine to five in late summer, and from five to three in January 1985. How this selection is to be made has not been revealed in the Mission Plan, and no further tests will be conducted to provide new information to assist the selection process. We would like for you to appeal to the Department of Energy to develop and publish for comment the methodology to be utilized.

OUR CONCERN/POPULATION

THE MISSION PLAN, states "The Richton dome, also shown in Figure 7-6, is in Perry County, Mississippi, about 20 miles east of Hattiesburg and 10 miles north-northeast of New Augusta. The nearest town is Richton, which is approximately 2 miles away and has about 1200 residents.

CONCERN: The fact is that part of Richton is located on the dome. Also, Laurel is only approximately 30 miles North of Richton.

(attached is a fact sheet from ONWI-109 dated February 1982, giving the distance of Richton to and relative to the dome)

The Mission Plan should further address concern for people. Human life must take top priority. Human life and safety is being pitted against the favorable qualities of the Richton Dome and its large lateral extent which is needed for a very large buffer zone and technically conservative repository loadings. And also DOE is succumbing to the political pressures of the nuclear power industry and politicians from the more densly populated areas that consume this nuclear power.

2.4.3 [illegible]

MISSISSIPPI: (PAGE 17) February 1982

0 Richton dome is located in northern Perry County, the dome center 2 miles (about 3 kilometers) west of Richton in southeastern Mississippi.

2,4,8.1 POPULATION DENSITY AND URBAN AREAS (page 66)

.... And the Town of Richton is located on the edge of Richton Dome, but urban proximity is not considered to be differentiating.

2.4.9.2. AIR, WATER, AND LAND USE CONFLICTS (Page 69)

....The location of the town of Richton near Richton Dome and the wildlife preserve at Lamptéon Dome were categorized as less favorable from a land use standpoint.

2.4.10 SOCIOECONOMIC IMPACTS

2.4.10.1 SOCIAL/ECONOMIC (PAGE 71)

THE Socioeconomic Impacts on the Town of Richton, which would be located in the control zone if a repository were sited in Richton Dome, are considered less favorable. They should be given detailed consideration during the next phase and be included in the environmental impact statement.

2.4.10.1 (page 73)

Mississippi counties where the domes are located have no comprehensive land use plans.

3.0 RECOMMENDATION OF DOMES

3.2 ACCEPTABLE DOMES (page 77)

RICHTON DOME: This dome is acceptabel and highest ranked because it has few less favorable qualities and because of its large lateral extent, which would provide for a very large buffer zone and technically conservative repository loadings. However, it is potentially less favorable due to a land use and socioeconomic conflict, (i.e., the location of the town of Richton within a potential outer control Zone for the repository site).

3.3 CONCLUSIONS (page 78)

....Richton is assessed as the more favorable due primarily to its size.

* D-1 APPENDIX D GLOSSARY ....(page D-1)

* CONSERVATIVE...Providing large margins of safety against undesirable outcomes without overestimating adverse consequences and underestimating mitigating factors.

ONWI- 109: FEBRUARY 1982.

4.2.5. LAND USE CONFLICT AND SOCIOECONOMIC IMPACT:

4.3 CONCLUSION (page 85)

Richton Dome has a significant, but potentially resolvable, land use and socioeconomic conflict that deserves further study, but which does not outweigh its favorable safety provided by containment and isolation capabilities.

ONWI-293....DECEMBER 1981

3.1.1 SITE GEOMETRY (CRITERION 1) Page 3-2

The purpose for describing the Site Geometry is two-fold: First, to refine the model of Richton Dome developed during Area Characterization, in order to confirm that the dome can accommodate the proposed repository with a buffer zone adequate to insure the overall integrity and satisfactory performance of the repository.

page 3-3....The salt stock is approximately eight miles long by two miles wide at -6000 feet MSL....The horizontal areas of the dome are 5585, 5825, and 5847 acres at the -2000, -2500 and -3000 feet MSL elevations, respectively.

MISSION PLAN....Chapter 8

PACKAGING OF SPENT FUEL:

Current plans for the first repository call for the packaging of spent fuel at the repository. During the first 4 years of repository operation (i.e., the first phase of the repository..see Section 111.A of Volume 1), the spent fuel will be received in shipping casks and transferred into metal canisters for underground emplacement. When the second phase of the repository begins, the spent fuel will be consolidated as well as packed into canisters. the spent-fuel assemblies will be taken apart and the fuel rods rearranged to accommodate the rods from two or more assemblies in the space of one assembly. This rod=consolidation process begins with the clamping of the lower end fitting of the assembly and the removal of the upper end fittings of the assembly with a cutting tool. The fuel rods are then gripped with a specially designed tool and pulled from the assembly. The rods are first transferred to a transition canister and then to the emplacement canister. The non-fuel-bearing skeletons of the assembly are crushed and placed in separate containers.

(Page 10-9 of MISSION PLAN) states that "The disassembly and consolidation of spent-fuel rods will occur at the repository,"

CONCERN:

Will the transferring of the rods from assembly, to the transition canister to the emplacement canister allow greater amounts of radiation releases to the workers and the enviornment because of the breaking of the rods and the time required to complete the process?

What type facility will be constructed to perform the rod-consolidation process?

ANOTHER CONCERN of ours is, due to the fact that Law-Engineering was dismissed as the Key DOE Contractor for field studies in Mississippi because of "poorly done" studies, and that the law suite is still pending on file at the Federal Court Building in Hattiesburg, Mississippi entered by Law Engineering versus Battelle Memorial Institute. How can a technically safe site selection decision be made on "poorly done" studies?

Senator DOMENICI. Senator, let me suggest with reference to the efficacy of the mission plan, we will hold another hearing. I hope you understand that the reason we are going to limit today's is that we are on a referral basis here. We got the bill sent to us that comes out of another committee and our jurisdiction is only as to a portion of it. And that is the portion that you addressed your remarks to with reference to the language of exclusivity of rights, plus the proviso regarding previously existing laws and that is all we have before us at this time, but we have overall jurisdiction and we will have hearings on the mission plan sometime in September, at which time we surely want the benefit of your State's experience regarding how that is working and how you think it is going to work.

Senator COCHRAN. I appreciate that, Mr. Chairman, very much. I thank you again for permitting me to testify before your subcommittee and we look forward to continuing to work closely with you on these very important subjects.

Senator DOMENICI. Thank you very much.

Senator COCHRAN. Thank you.

Senator DOMENICI. Let me ask a couple of questions, if I might please. Do I understand it that you have basically two points, first, it is too soon to begin to amend the Nuclear Waste Policy Act; and, second, an amendment like the one we have before us might have adverse effects on the ability of your Department to deal openly with the affected States and Indian tribes. That is basically your position, as I understand it. Is that correct?

Mr. RUSCHE. That is correct, Mr. Chairman.

Senator DOMENICI. As you know, we have asked the General Accounting Office to institute a quarterly report to this committee on the status of the nuclear waste disposal program. One of the things we asked them to try to stay on top of for us is the status of the various Federal and State relationships. Could you summarize for us now or for the record the status of your relationships with the potential host States for the first repository?

Mr. RUSCHE. Mr. Chairman, in my 2 months' tenure as Director of the Office, I have had beginning contacts with several of the States. There is, far preceding my arrival, an extensive program that has been involved.

Senator DOMENICI. Would you like to do that for the record then?

Mr. RUSCHE. I think it might be worthwhile, in particular that we have involved ourselves with a number of grants and assistance activities that I believe would be good for the record and if you do not mind, I would appreciate it if I might enter it for the record.

Senator DOMENICI. Let's do it that way. Is 10 days adequate, 2 weeks?

Mr. RUSCHE. Ten days is fine.

[Subsequent to the hearing Mr. Rusche submitted the following information:]

Subcommittee on Energy Research and Development
Committee on Energy and Natural Resources
July 31, 1984

Witness:
Ben C. Rusche
Director
Office of Civilian Radioactive Waste Management
U.S. Department of Energy

INSERT FOR THE RECORD

We have made grants to all six states which contain potentially acceptable sites for the first repository; the Yakima and the Umatilla Indian tribes which have been designated as affected Indian tribes; National-level state organizations, including the National Governors Association, the National Council of State Legislatures, the National Conference of American Indians; and sixteen of the seventeen states which contain crystalline rock bodies under study for possible consideration for the second repository. The attached table contains a listing of the most recent grant awards and those pending. These grants make it possible for States and Indian tribes to review technical data, to review and comment on DOE documents, to attend public hearings and public meetings on the waste program, to monitor and participate in Congressional and other activities and to develop public information programs.

(Table follows)

CURRENT ACTIVITY REPORT

OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT
GEOLOGIC REPOSITORY DEPLOYMENT
FINANCIAL ASSISTANCE INFORMATION CLEARINGHOUSE

	Most Recent Award			Pending Application			Total Awards (Post-NWPA)
State/Indian Tribe	Amount	Award Date	Project End	Date	Amount	Proposed Period	
Umatilla Indians	$218,894	05/10/84	09/30/84	N/A	N/A	N/A	$ 218,894
Washington (Executive)	$651,602	11/23/83	09/30/84	N/A	N/A	N/A	$1,001,565
Washington (Legislature)	$138,845	02/21/84	09/30/84	N/A	N/A	N/A	$ 138,845
Yakima Indians	$717,331	05/14/84	09/30/84	N/A	N/A	N/A	$1,153,914
Nevada	$646,083	04/09/84	09/30/84	N/A	N/A	N/A	$ 996,083
Louisiana	$533,319	01/04/84	01/03/85	N/A	N/A	N/A	$ 533,319
Mississippi	$674,980	09/27/83	09/30/84	N/A	N/A	N/A	$ 674,980
Texas	$ 3,000	05/23/83	12/30/83	4/1/84	$ 573,617	6/1/84-5/31/85	$ 215,240
Utah	$401,688	09/27/83	09/30/84	5/3/84	$3,266,877	5/1/84-9/30/84	$ 473,688
Connecticut	$168,143	02/21/84	12/31/84	N/A	N/A	N/A	$ 195,343
Georgia	$ 17,040	01/09/84	12/31/84	N/A	N/A	N/A	$ 112,440
Maine	$ 26,848	02/15/84	12/31/84	N/A	N/A	N/A	$ 265,437
Maryland	$ 0	02/27/84	12/31/84	N/A	N/A	N/A	$ 31,734
Massachusetts	$122,721	02/21/84	12/31/84	N/A	N/A	N/A	$ 169,410
Michigan	$195,011	02/16/84	12/31/84	N/A	N/A	N/A	$ 274,131
Minnesota	$189,495	03/16/84	12/31/84	N/A	N/A	N/A	$ 361,995
New Hampshire	$ 0	03/08/84	12/31/84	N/A	N/A	N/A	$ 89,883
New Jersey	$ 96,207	03/09/84	12/31/84	5/22/84	$ 0	N/A	$ 161,716
New York	$ 0	02/03/84	12/31/84	N/A	N/A	N/A	$ 200,000
North Carolina	$ 47,055	03/07/84	12/31/84	N/A	N/A	N/A	$ 297,546
Pennsylvania	No proposals have been received.						$ 0
Rhode Island	$ 99,525	09/28/83	12/31/84	N/A	N/A	N/A	$ 99,525
South Carolina	$ 95,819	02/24/84	12/31/84	N/A	N/A	N/A	$ 252,186
Vermont	$ 42,462	01/16/84	12/31/84	N/A	N/A	N/A	$ 52,462
Virginia	No awards made.			1/5/84	$ 60,351	01/01/84-09/30/84	$ 0
Wisconsin	$199,093	02/24/84	12/31/84	N/A	N/A	N/A	$ 341,665
Organization							
NCAI *	$205,000	02/29/84	02/28/85	N/A	N/A	N/A	$ 205,000
NCSL **	N/A	N/A	N/A	2/1/84	$ 217,021	N/A	$ 0
NGA ***	$121,900	9/19/82	9/30/83	3/21/84	$ 232,320	1/1/84-12/31/85	$ 0

* National Conference of American Indians
** National Conference of State Legislatures
*** National Governors Association

Senator DOMENICI. Let me try one more thought on it that is kind of disturbing to me. Basically the notion of consultation and cooperation evolved out of a previous law, which I was involved in along with some of this staff that is here with me and has been at it for years called consultation and concurrence, which ended up consultation and cooperation.

Mr. RUSCHE. Yes, sir.

Senator DOMENICI. And the consultation and cooperation ends up with that part that we thought of as concurrence, which was effectively a veto if there was nonconcurrence for valid reasons, it ends up with the ultimate concurrence part being vested up here if the State decides that they don't want it. But we had always envisioned that the plan for this whole relationship between the State and the Department would be a written agreement, which would add various milestones and goals with reference to the program. I am somewhat concerned that the States are focusing on the mission plan and the document as being the most important element of their relationship with the Federal Government.

Is my impression right that they are not putting the same energy into the negotiations on a binding, written agreement which was called for under the act? I thought that was the way we were going to spell out the various goals and critical points in the evolution in a way that was relevant to the State and which would permit the answering of questions pursuant to the agreement at various times in a scientific manner with a covenance as to how they would go about answering, and we even had arbitration as a possible solution to some disagreements on the scientific end.

Am I reading it wrong that the States are not interested in that aspect as much as they are the broader plan that is the mission plan?

Mr. RUSCHE. Mr. Chairman, it is my opinion based again on this short period that the States are interested in both activities. I think the consultation and cooperation agreements which we are working diligently to put in place, we have one that is near ready for signature by both the Department and the State, but there remain two or three crucial issues that have not yet been resolved and it may take some time to resolve.

I think in light of this, since that document would have considerable effect and do some of the very same things that you are talking about, in the meantime States have focused their attention on the mission plan as a right and proper place to determine what our plans are. I think when we get to the discussion of the mission plan it would be very valuable for us to try to distinguish between a plan and a program statement and taking these all together, I think we will finally wind up with a set of documents and arrangements which will make for a very effective relationship.

I want to compliment the States already, that even though we have not reached those States of finality in either sets of documents, we have managed to establish good working relationships. I am sure some of the States would argue that they are not as good as they would want, but I believe we are continuing to make progress. So I would rather not focus attention on the defects but rather on the potential for both of them being effective in the future.

Senator DOMENICI. Might I ask, are you familiar with the detailed agreement between the State of New Mexico and the Federal Government with reference to the waste isolation pilot project, even though that is not civilian and it is not high level waste? It is a consultation and concurrence agreement.

Mr. RUSCHE. Yes, sir.

Senator DOMENICI. You are familiar with it?

Mr. RUSCHE. In fact, you may recall that you and I had discussions on that in one of my other existences, so I have had some contact with it. I am not today prepared to discuss it in detail.

Senator DOMENICI. I did not mean that. I just think that it——

Mr. RUSCHE. But it does offer some very real potential and guidance, and we can learn from that.

Senator DOMENICI. That is all I meant. If somebody thinks you cannot write down in an agreement the difficult concepts that have to be written down, they were written down by lawyers and scientists in that document.

Mr. RUSCHE. And I think we can. I think we will find that as soon as these last two issues are drawn into sharp enough focus to determine just how we deal with them in the long term that we will be able to move ahead.

Senator DOMENICI. Thank you very much.

Mr. RUSCHE. Thank you, Mr. Cnairman.

Senator DOMENICI. Steven Frishman, director of Nuclear Waste for the Governor's office for the State of Texas. Welcome. Do you have a written statement?

Mr. FRISHMAN. Yes, I do. I believe you have a copy of it.

Senator DOMENICI. In the event you do not read it all we will make it a part of the record. Thank you for coming.

STATEMENT OF STEVEN FRISHMAN, DIRECTOR, NUCLEAR WASTE PROGRAMS OFFICE, OFFICE OF THE GOVERNOR, STATE OF TEXAS, AUSTIN, TX

Mr. FRISHMAN. Thank you, Mr. Chairman. My name is Steven Frishman. I am director of the Nuclear Waste Programs Office in the office of the Governor of Texas.

I appreciate the opportunity to comment on this amendment, S. 2846. As you are probably aware, the language is not entirely new. In fact, it appeared only without specific reference to sections of the bill near the end of the debate on S. 1662 in 1982. That provision was deleted before passage of the bill by the Senate. Senator Stafford at that time questioned whether the existence of that or the failure of that language to exist would result in precluding recognized rights of States. Senator Stafford was assured by Senator Simpson and acknowledged that assurance that, no, this did not preclude the existing rights of States. We agree with that position of Senator Simpson.

We believe that the amendment as it is now presented would serve, rather than expand the rights of States, would actually serve to limit the rights as was interpreted by Senator Cochran. We also have a problem with the use of the word exclusive, and it could easily lead to the conclusion that the intent of the word exclusive would be sole or only. We find this conclusion to not be justified,

given that there are numerous other provisions in the act, outside of the enumerated sections of the amendment, that refer specifically to participation of affected States and Indian tribes.

Just a few examples are in section 301(b) regarding mission plan interactions; section 113(a) regarding consultation on site characterization; section 113(b) onsite characterization plans, and so on.

We are further concerned—you raised the issue with Ben Rusche of written agreements—we are further concerned that this could even impact the scope of content of the written agreement that is provided for in section 117(c) by restricting the provisions of the agreement to those explicitly defined or described in sections 115 to 118. We feel that the written agreement should not be so constrained. This position seems to be supported by the general spirit of consultation and cooperation within the Nuclear Waste Policy Act.

During the months since adoption of the act, we have found the degree of flexibility offered by not placing specific bounds on participation of States and tribes to be beneficial in implementation of the act. A couple of examples, one was at least mentioned already. The first has to do with the extended consultation that was undertaken in development of the repository siting guidelines, which are required under section 112(a). This, I believe, has resulted in improvements in both the substance and the process of the guidelines which have now received the concurrence of the NRC.

We are not fully satisfied with the final product that received that concurrence, but we are encouraged that the guidelines are at least—or at least indicate a sensitivity to applicable State and Federal laws, other than the Nuclear Waste Policy Act. Also, as was mentioned earlier, the act does not require a draft of the environmental assessments under section 112, but by not having constraint placed on the Department, as we think this amendment may constrain them, the Department was able to make a commitment for the draft which we think is a necessary step, whether required by the act or not, in developing the environmental assessments that will ultimately support nominations.

In short, we do not see that the proposed amendment provides any further assurances of State and Indian tribe participation than already exists in the act and are implicit in the DOE High Level Waste Program. As also mentioned, the proposed amendment can be interpreted to greatly limit participation and the flexibility needed by all parties to carry out effective participation and consultation.

We are also concerned that if the amendment is adopted, it could be interpreted to refer to State laws that were enforced before passage of the act, as was mentioned earlier. This interpretation could preclude States in the course of gaining experience with the program and its authorities from enacting appropriate legislation addressing legitimate State concerns and authorities at any time. For example, since passage of the Nuclear Waste Policy Act, the Texas Legislature has exercised its authority in ground water protection by adopting legislation regulating the construction of mine shafts through underground waters, in order to protect the quality and the quantity of the valuable aquifers that may be impacted either by the DOE Program or by any commercial mining in the State.

The State has recognized authority in this area of responsibility and there should be no Federal action that would usurp this legitimate responsibility of the State.

The proposed amendment should be removed from consideration for an additional reason. The act as it stands represents a number of years of time and effort and careful negotiation of its provision. We grant that there are in the act some technical errors that, while not critical now, will require repair at some time, and some schedule provisions have already proven to be unrealistic. But we share with many others the view that reopening the Waste Policy Act to debate of any of its provisions is premature and may result in upsetting the delicate balance created in the act for relations among the affected parties.

Without this well-considered balance of provisions for State and Indian tribe participation contained in the act, the already difficult job of managing and safely disposing of high level nuclear wastes will become substantially more difficult and maybe even impossible. If we thought that the proposed amendment would further that balance in a clear and substantive way, we would be here supporting it and be willing to face dealing with the additional burden of other possible amendments disrupting the overall balance of participation woven into the act. The proposed amendment does not justify the potential risks of reopening the act.

All parties who have been involved with this first approximately 18 months of implementation of the Nuclear Waste Policy Act have been impressed with the flexibility it provides in participation and consultation. In our view, this has been to the benefit of the overall program and certainly does not favor any particular interest as is readily seen in the history of debate through this early period of implementation.

In conclusion, we urge that the proposed amendment be deleted from S. 2846 for the following few reasons: One, it does not seem to serve the interests of affected States or Indian tribes;

Two, it could place limitations on the relationships between affected States and Indian tribes and the Federal Government at a time when it is critical to the waste program that all parties be able to deal with problems in a manner that is responsive to the purposes of the act and yet not overly constraining on any part.

And three, this could result in further debate of other provisions of the act resulting in amendments that would be disruptive of a carefully balanced program that, as might be expected, is feeling its way toward an acceptable solution to the Nation's high level waste problems.

In this first of its kind effort, we are all seeking means to improve the process and the result, but at this time it is premature to consider amendments that are not fully understood to benefit the purposes of the act and may, in fact, disrupt a process that through experience we are all finding has the attributes of being sensitive to needs and rights of parties while not losing sight of its long-term mission and goals.

I appreciate the opportunity to present this testimony and would be pleased to attempt to answer any of your questions. Thank you.

[The prepared statement of Mr. Frishman follows:]

Testimony of

The State of Texas

Before the
United States Senate
Subcommittee on Energy
Research and Development

of the

Committee on Energy and Natural Resouces

REGARDING S. 2846
TITLE II - AMENDMENT TO THE
NUCLEAR WASTE POLICY ACT OF 1982

Presented By

Steve Frishman
Director, Nuclear Waste Programs Office
Office of the Governor
Austin, Texas

July 31, 1984

Title II of S.2846, referred to the Senate Committee on Energy and Natural Resources from the Committee on Environment and Public Works, proposes to amend the Nuclear Waste Policy Act of 1982 by addition of a new Section 126. As you are aware, the language of this proposed amendment is not new, and, in fact appeared, only without reference to specific Sections of the bill, in a near final version of S.1662 in late 1982. The provision stated in Section 708(b) of that bill was deleted from the final bill as passed on the Senate floor. The Congressional Record of December 20, 1982, page S.15668 records an exchange between Senators Stafford and Simpson on this deleted provision of the bill, with Senator Simpson responding with assurances that the deletion should not be interpreted to suggest, as Senator Stafford questioned, "that this act would preclude recognized rights of States or Indian tribes under existing law with respect to either a monitored retrievable storage facility or a geologic repository". Senator Stafford acknowledged the assurances of Senator Simpson.

We agree with the position taken on this matter by Senator Simpson, and further believe that the amendment, as now presented as a new Section 126 of the NWPA, would serve to limit the rights of State and Indian tribe participation now contained within the NWPA regarding MRS and geologic repositories. By stating that "(t)he provisions of sections 115, 116, 117, and 118 of this subtitle shall constitute the exclusive (empnasis added) rights of participation by an affected State of Indian tribe in the planning, siting, development, construction and operation of a repository or a monitor, retrievable storage ...", the intent could be read to conclude that the word exclusive, in this case, means "only or sole". Such a conclusion is not justified, given that there are numerous other provisions in the Act, outside of the ennumerated sections of the amendment, that refer specifically to participation of affected States and Indian tribes. A few of these are as follows: Section 301(b), regarding Mission Plan interactions; Section 113(a), regarding consultation on site characterization; Section 113(b) regarding Site Characterization Plans; Section 114(a), regarding hearings before recommendation of a repository and the opportunity to respond to a repository recommendation.

We are further concerned that the proposed amendment could impact the content of the Written Agreement, provided for in Section 117(c), by restricting the provisions of the agreement to those explicitly defined in Sections 115 through 118. We hold the view that the written agreement should not be so constrained, and feel this position to be supported by the general spirit of consultation and cooperation embodied throughout the Nuclear Waste Policy Act of 1982.

During the months since adoption of the Act we have found the degree of flexibility offered by not placing specific bounds on participation of States and Indian tribes to be beneficial in implementation of the Act. Two examples of these benefits are noteworthy: first, the extended consultation regarding the development of the repository siting guidelines, which are required by Section 112(a), has resulted in improvements in both substance and process in the application of the guidelines. We are still not fully satisfied with the final product that has received the concurrence of the Nuclear Regulatory Commission, but we are encouraged that the Guidelines at least indicate a sensitivity to applicable state and federal laws, other than the NWPA. And second, the Act does not require the DOE to develop and offer for extensive review, a draft of the Environmental Assessments required by Section 112, yet

the flexibility exists within the Act for DOE to make this commitment, as it has done, when circumstances indicated it was an appropriate action.

In short, we do not see that the proposed amendment provides any further assurances of State and Indian Tribe participation than already exist in the Act, and are implicit to the DOE high-level nuclear waste management program. And, as indicated above, the proposed amendment can be interpreted to greatly limit participation and the flexibility needed by the parties to carry out effective participation and consultation.

We are additionally concerned that, if adopted, the amendment could be interpreted to refer only to State laws that were in force at the time of passage of the NWPA. This interpretation could preclude States, in the course of gaining experience with the program and its authorities, from enacting legislation addressing legitimate state concerns and authorities. For example, since passage of the NWPA, the Texas Legislature has exercised its authority in groundwater protection by adopting legislation regulating the construction of mine shafts through underground waters, in order to protect the quality and quantity of the valuable aquifers that may be impacted by both the DOE repository program and commercial mining operations in the State. The State has recognized authority in this area of responsibility, and there should be no federal actions taken that would usurp this legitimate responsibility of the State.

The proposed amendment should be removed from further consideration for an additional reason. The Act, as it stands, represents a number of years of time and effort in the careful negotiation of its provision. We grant that there are in the Act some technical errors that, while not critical now, will require repair at some time, and some schedule provisions that have already proven unrealistic, but we share with many others the view that reopening the NWPA to debate of any of its provisions is premature and may result in upsetting the delicate balance created in the Act for relations among the affected parties. Without the well considered balance of provisions for State and Indian tribe participation contained within the Act, the already difficult job of managing and safely disposing of high-level nuclear wastes will become substantially more difficult, if not impossible. If we thought that the proposed amendment would further that balance in a clear and substantive way, we would be here supporting it, and be willing to face dealing with the additional burden of other possible amendments disrupting the overall balance of participation woven into the Act. This proposed amendment does not justify the potential risks of re-opening the Act.

All parties who have been involved with this first approximately 18 months of implementation of the Nuclear Waste Policy Act have been impressed with the flexibility it provides in participation and consultation. In our view, this has been to the benefit of the overall program, and certainly does not favor any particular interest, as is readily seen in the history of debate through this early period of implementation.

State of Texas Testimony
July 31, 1984 - Page 3

In conclusion, we urge that the proposed amendment be deleted from S.2846 as it a) does not seem to serve the interests of affected States and Indian tribes; (b) could place limitations on the relationship between the affected States and Indian tribes and the federal government at a time when it is critical to the waste program that all parties be able to deal with problems in a manner that is responsive to the purposes of the Act, yet not overly constraining on any party; (c) could result in further debate of other provisions of the Act, resulting in amendments that would be disruptive of a carefully balanced program that, as might be expected, is "feeling its way" toward an acceptable solution to the nation's high-level nuclear waste disposal problems. In this first-of-its-kind effort we are all seeking means to improve the process and the result, but, at this time, it is premature to consider amendments that are not fully understood to benefit the purposes of the Act, and may, in fact, disrupt a process that through experience, we are all finding has the attributes of being sensitive to needs and rights of parties while not losing site of its long-term mission and goals.

We appreciate this opportunity to present testimony before this subcommittee on this important matter of amendment to the Nuclear Waste Policy Act. I will be pleased to attempt to answer questions from the subcommittee members regarding this testimony. Thank you.

Senator DOMENICI. Thank you very much. Let me first ask if Senator Levin has any questions of Mr. Frishman, because we are going to call Ben back at your request, but I thought while we have Mr. Frishman here, you might want to inquire of him.

Senator LEVIN. I do not, thank you.

Senator DOMENICI. Let me ask you just a couple of questions and then we will ask Mr. Rusche to come back up here. When you speak of this amendment, the part that proceeds the proviso that might be limiting in terms of the various activities between the Federal Government and the State or States, actually there is one thing that it seemed to me that we did clearly want to do in that law, and that was to preclude the States from adopting or having in effect any law that usurped the method of ending up saying yes or no, the so-called veto through legislative concurrence provision.

It seems to me that clearly we did not want each State to have the prerogative to have its own method of doing that that would supersede or invalidate that process. Might I ask, do you read the law that way also?

Mr. FRISHMAN. First of all, yes, I am aware of your concerns in that area. I also have that concern. In Texas, we feel we have been very careful to stay within what we consider to be our legitimate jurisdiction of the act that the last session of the legislature passed regarding construction of mine shafts is intended to be as equally applicable to the mining industry. Our concerns grew because of the Department's apparent potential for a first time effort in putting a mine shaft through a very valuable underground aquifer.

We have written the legislation and we are now in the process of finalizing the rules for implementation in a way that the intent is not to make it impossible to get a permit. It is to protect the quantity and quality of water.

Senator DOMENICI. The reason I asked the question, I tend to agree with you that we surely ought not be limiting the kind of areas that you have just explained you want flexibility in and that the Federal man in charge has explained flexibility seems to already be evolving in. But that naturally leads me to the question that we are not talking about flexibility to the extent of over all adoption of an alternate or optional State veto mechanism.

Mr. FRISHMAN. We had an opportunity in a special session of our legislature just recently where there was at least one resolution that failed to get the concurrence of the Texas House, that would have in essence demanded a notice of objection from the legislature and we encouraged that not pass and it was not passed.

Senator DOMENICI. I thank you for your testimony and for the trouble you have gone to to come up here. We very much appreciate your incisive testimony.

Mr. FRISHMAN. Thank you. I would also just like to note that I think it is interesting that all of the testimony you will hear today is very much along the same lines and this may be unique for this program.

Senator DOMENICI. Ben Rusche, Senator Levin would like to ask you some questions.

Senator LEVIN. First of all, Mr. Chairman, my apologies for being late. I greatly appreciate your asking Mr. Rusche to stay on so I could ask some questions.

Senator DOMENICI. No problem.

Senator LEVIN. Would the adoption of section 201 in the bill end up with our favoring certain States or disfavoring other States relative to the siting of the waste disposal facility?

Mr. RUSCHE. To the best of my understanding, it would not unless the proviso portion, which the chairman has referred to, was somehow construed to grant individual States some prior rights or some means to introducing their own veto. Absent that, I do not know of any way it would.

Senator LEVIN. That is the issue, whether or not that proviso language would indeed do that. What is your understanding of the words "recognized right" of any State? Do you think it is clear as to what that means?

Mr. RUSCHE. No, sir; in fact, I even attempted to look at the particular law to which I believe this applies in Vermont and about which Senator Stafford was particularly interested. To my mind, it is interesting that the objectives of that law are largely embodied in our guidelines as the things that that law appears to be intended to preserve or protect or elements in the program that we now have, except for the provisions that relate to permitting.

And my understanding of the law is that the Vermont law would or does require certain types of permits and may fall into the same kind of category Mr. Frishman was just talking about, and I am not prepared to analyze the law in that level of detail at the moment.

Senator LEVIN. My specific question is: Do you think it is clear what is meant by the words "recognized right" of any State?

Mr. RUSCHE. No, sir.

Senator LEVIN. Do you think that the words "existing law" are clear?

Mr. RUSCHE. I would imagine that if there was some way that someone could go to some compendium and determine what is existing law——

Senator LEVIN. Existing as of when?

Mr. RUSCHE. I guess at the time the act was passed, that is, when the NWPA was passed.

Senator LEVIN. Is that in your opinion clear from these words as to exactly when the words "existing law" refer to?

Mr. RUSCHE. No, sir, I would not have you interpret my responses as a full legal analysis of that interaction and I am not at the moment either prepared or qualified to offer that. I am offering my opinion.

Senator LEVIN. If it would be fair to give certain States certain preferences or benefits because they happen to have a law in effect as of the time of the effective date of the Nuclear Waste Policy Act of 1982, would it not be equally fair that other States should be able to pass similar laws to achieve the same benefits?

Mr. RUSCHE. I would think that is a valid statement, that whatever the rights are for one State they ought to be fairly uniform with all of the States.

Senator LEVIN. So that you would not think it would be fair that whatever rights some States have that are in existence as of the effective date of the law be limited to that State?

Mr. RUSCHE. Correct.

Senator LEVIN. I did read your testimony, and I am sorry I was not here to hear your testimony, but in reading it, I did not see those particular words of the proviso addressed. Did I miss something in your oral testimony?

Mr. RUSCHE. No. In my oral testimony I tried to make the point that I focused attention on the first part of the act, which to me appeared to be the more operative part and the latter part, which was very much in the discussion between the chairman and Mr. Frishman, goes to the points which I think the NWPA effectively deals with, mainly makes the situation fair for all of the States by virtue of the provisions for veto and consideration by the Congress and from the execution of the program, I think the issue is far more important in terms of the ability to deal openly and fairly with the States.

Senator LEVIN. Thank you, Mr. Chairman.

Senator DOMENICI. Thank you very much. Thank you, Senator.

David Berick, director of the nuclear waste project, Environmental Policy Institute. We are glad to have you before us again. Your statement will be made a part of the record. Would you proceed and if you could summarize it for us.

STATEMENT OF DAVID BERICK, DIRECTOR, NUCLEAR WASTE PROJECT, ENVIRONMENTAL POLICY INSTITUTE

Mr. BERICK. I would be happy to, Senator. I am David Berick, director of the nuclear waste project of the Environmental Policy Institute. Senator, as you know, the language of section 201 echoes the legislative provisions of the previous Senate bill 1662 that was debated by this committee and by the Senate in the 97th Congress and eventually became part of the Nuclear Waste Policy Act.

The provisions of section 201 echo specific provisions that were adopted by this body in that Congress and it is our belief that the intent of section 201, as we draw from this previous legislative history, is in fact embodied in the Nuclear Waste Policy Act and does not require further amendment at this point.

But let me spend a little bit of time this afternoon, if I may, trying to address the two parts of this amendment, the exclusivity part and the recognized rights part. As I have gone back through the legislative history, I think what comes across most importantly is that Senator Stafford in proposing that language is really driving at two important issues. The first principle that he was trying to establish was the one that you have just been discussing, which was equality, that no State should have a procedural advantage over any other State. In my testimony I quote from some remarks you made when the Senate was debating this very issue.

I think that the goal of that equality of procedure was originally reflected in Senator Stafford's amendments in the 97th Congress by trying to draw on that exclusivity language. But I think we were really trying to drive at and what I think is in fact embodied in the Nuclear Waste Policy Act is the principle that as far as the veto right, the concurrence override, whatever you want to call it, objection override, is in fact the way in which States and the Federal Government are supposed to arrive at that ultimate decision.

It is our belief that that was the principle behind Senator Stafford's amendment then and in Senator Stafford's amendment now. We believe that is in fact embodied in the Nuclear Waste Policy Act.

As far as the recognized rights question, I have gone through in my testimony and cited some specific examples where we believe that the Nuclear Waste Policy Act does not only provide for the retention or preservation of preexisting States' rights, but is actually dependent upon that. As you have suggested yourself, we are in the process of negotiating with States on memorandums of understanding.

Many States, for example, Wisconsin at the time the act was passed, Mississippi at the time the act was passed, as I understand it, had State review board mechanisms within the States that set up a process for how the State would decide what its policy positions would be which then would be communicated on to the Department of Energy and be worked into the agreements.

It is certainly not my impression that the Congress intended to override those kinds of internal State procedures and State laws. So I think the distinction that was inherent in Senator Stafford's amendments was to draw the distinction between how the States and the Federal Government interacted in terms of that ultimate decision to site or not site the repository.

And the other kinds of States rights and procedures that fell short of that, and I do not believe really that the Nuclear Waste Policy Act intended to vacate those, other examples would be Indian treaty rights, for example. If you look at the definition in the act of how an Indian tribe becomes an affected tribe, it depends upon those preexisting treaty rights, as the determining factor in whether a tribe is designated as an affected tribe or not. So the procedures in the Nuclear Waste Policy Act are in essence trig-

gered by those preexisting rights and agreements in treaties, at least within the case of Indian tribes.

So without lengthening the hearing, I think that where we are at this point is that the Nuclear Waste Policy Act does in fact envision that a large number of preexisting rights of States and Indian tribes are preserved, should be preserved in the act. We do not believe that the act requires further amendment, but I think it is important to understand that many of, I think, Senator Stafford's intentions in proposing this language are extremely important, need to be preserved in the legislative history of the act. To the extent that this committee is now taking up an amendment that reflects that language, I hope the committee would be extremely careful in how it drafts its report and that we would not end up in trying to strip out the Stafford amendment from the legislation, if that is the committee's wishes, that we end up vacating some very, very important principles and very important legislative history that are now embodied in the Nuclear Waste Policy Act.

That concludes my statement. I would be glad to answer any questions that you may have.

[The prepared statement of Mr. Berick follows:]

ENVIRONMENTAL POLICY INSTITUTE

TESTIMONY OF DAVID BERICK

DIRECTOR, NUCLEAR WASTE PROJECT

ENVIRONMENTAL POLICY INSTITUTE

ON

S. 2846, NUCLEAR REGULATORY COMMISSION AUTHORIZATION BILL

BEFORE

SENATE SUBCOMMITTEE ON ENERGY RESEARCH AND DEVELOPMENT

JULY 31, 1984

Mr. Chairman, on behalf of the Environmental Policy Institute, I thank you for the opportunity to testify before the Subcommittee on Energy Research and Development concerning Sec. 201 of S. 2846, the FY' 84-85 Nuclear Regulatory Commission Authorization Bill.

Section 201 of the bill would amend the Nuclear Waste Policy Act of 1982(NWPA)(P.L. 97-425). Amendment of the NWPA, so soon after its enactment, is itself a controversial issue given the tenuous nature of the compromises it embodies and the difficult and often contentious legislative process necessary to fashion them. To make matters even more difficult, Sec. 201 would amend the provisions of the NWPA related to one of the most significant and debated portions of the Act; the balance of responsibilities among the Federal Government and states and Indian tribes.

The issues raised by Sec. 201 are not new issues. Indeed, as I will discuss further, Sec. 201 echoes provisions originally debated as part of the NWPA; provisions which have a long legislative history of their own, including a colloquy between

Sen. Stafford and Sen. Simpson during final passage. The Stafford/Simpson colloquy(attached) confirms that the intent of Sec. 201 to preserve any "recognized" existing state and tribal rights is embodied in the NWPA.

It is our view that the intent of Sec. 201, to clarify the relationship among Federal, state and tribal interests, and prevent the unwarranted or inadvertant repeal of state or Tribal rights is a worthy one and one which we generally support. As we understand it, Sec. 201 underscores the primacy of the NWPA in defining the procedures for waste facility decisions and the participation of states and Indian tribes in those decisions while preserving a variety of rights, under both Federal and state laws, to states and Indian tribes.

We believe, however, that the letter and legislative history of the NWPA including the Stafford-Simpson colloquy is sufficient to convey this intent of Sec. 201 without further amendment. While establishing a procedure fof state and tribal participation in Federal waste siting and development decisions, notably an objection/override mechanism, the NWPA does not preempt preexisting state or tribal rights or laws or agreements that do not conflict with that procedure.

As the Subcommittee is no doubt aware the basic language of Sec. 201 originally appeared in 1981 as an amendment to S. 1662, the National Nuclear Waste Policy Act of 1981. The 1981 amendment was authored by Environment & Public Works Committee(EPW) Chairman Stafford and incorporated in both the EPW re-write of S. 1662 and in the compromise substitute amendment to S. 1662 cosponsored by Senators Mclure, Domenici, Stafford,

Simpson, Tower, Warner, Jackson, Hart, Randolph, Cannon, and Johnston. The Stafford amendment was subsequently incorporated into S. 1662 as adopted by the Senate in April, 1982.

The Subcommittee's consideration of Sec. 201 raises a number of extremely important questions about state and tribal participation in the Federal nuclear waste decisions precisely because of its close association with NWPA and its legislative history. Introduction of Sec. 201 has given all of us occasion to look carefully at the protections and procedures provided to states and Indian tribes in NWPA and their adequacy. Are pre-existing state or Tribal laws or agreements preserved under the NWPA or are they overturned? How independent or unique may a given state's or tribe's interaction with the Federal Government be under the NWPA? A careful reading of the legislative history of the NWPA sets much of this controversy to rest, but the lack of legislative history surrounding Sec. 201 and its appearance as an independent amendment raises questions. As discussed below, we believe that the NWPA provides an adequate basis for resolving questions of application of existing laws or agreements for state and tribal participation without additional amendment.

As described by Senate Report 97-282, the 1981 Stafford amendment was directed at establishing two important principles. First, states and Indian tribes should be entitled to the broadest possible rights and opportunities to participate in decisions concerning the development of waste facilities but that no state should possess an absolute or arbitrary right to veto such facilities. Second, all affected States and Indian tribes

should be treated equally in their procedural dealings with the Federal Government and that no single State or Indian tribe should enjoy a procedural advantage over another. The report specifically noted that one state "...may have obtained an agreement from Federal officials that would in effect grant the State an absolute veto right...." The amendment clearly intended to void such an agreement. (The text of this report language is appended to my testimony.)

The issue of equality among the states and Indian tribes in their procedural dealings with the DOE under the NWPA is an important principle. It was repeatedly upheld in both Houses over a broad spectrum of the debate. As Sen. Domenici stated in support of the substitute amendment to S. 1662 during the Senate debate in April 1982,

> "It is essential that each potential host State be be assured that it has an equal footing with other potential host States in the question of State participation." (Cong. Rec. April 29, 1982, p. S 4252)

This intention, that there be <u>equality</u> among host states and Indian tribes is not to say that their respective relationships with the Federal Government must be <u>identical</u>. Quite to the contrary, the NWPA specifically recognized the right of individual states to establish their own procedures for identifying, negotiating, and ratifying waste program issues and objections. During the House debate, for example, an amendment offered by Rep. Markey was adopted, and later incorporated in the NWPA, clarifying that either the governor <u>or</u> the legislature could represent the State and the accompanying colloquy makes clear that states have wide discretion in how they may structure

their interactions with the Federal Government under the NWPA. (See Cong. Record, Nov. 30, 1982, pp. H 8597-8598)

We do not believe that Congress intended to overturn state laws governing conduct of nuclear waste activities within the state in adopting the NWPA. In fact, Sen. Proxmire noted in the opening debate on S. 1662 the existence of such laws in over 20 states including Wisconsin which had established a state "Nuclear Waste Review Board." Indeed, such laws are presumed in establishing how a given state, for example, will set up its procedures for interacting with DOE and even in adopting S. 1662 with the original Stafford amendment, the Senate did appear to overturn those laws.

Another example of preservation of state and tribal rights embodied in the NWPA can be found in the designation and definition of "affected Indian tribe"(Sec. 2(2)). By definition the determination of an "affected" tribe under the NWPA rests with "federally defined possessory or usage rights to other lands outside of the reservation's boundaries arising out of congressionally ratified treaties." The NWPA clearly contemplates preservation of such rights and NWPA procedures are triggered depending on the scope of those preexisting rights.

I would also note that the NWPA also gives wide discretion in the establishment of legally binding written agreements between the Federal Government and states and Indian tribes(Sec. 117(c)) once again underscoring the intention that states and Tribes may establish procedures reflecting their unique requirements and circumstances.

Where Sec. 201 comes into question is how it will effect the NWPA. On the one hand the amendments appear to take away state or tribal rights by defining NWPA procedures as the exclusive right of participation while intending to preserve state and tribal rights on the other.

The language of Sec. 201 states that States and Indian tribes may retain "any recognized right...under existing law." Unfortunately, "recognition" may rest largely with the beholder and must ultimately be decided by the courts. I suspect in many cases state and tribal rights under existing laws may ultimately apply to nuclear waste controversies but such controversies were never contemplated nor "recognized" when those laws or agreements were established; Indian treaties for example. States and Indian tribes undoubtedly have and may exercise a range of prior rights ranging from Indian treaty rights to state nuclear waste review board laws. As noted in the discussion above, the NWPA clearly contemplates the exercise of these rights. What is less clear is how amendment of the NWPA by Sec. 201 would effect this situation.

The distinction which the 1981 Stafford amendment sought to achieve between appropriate and inappropriate Federal-state-tribal rights or agreements was a distinction between those which granted a State or Indian Tribe a specific right to veto the siting of a nuclear waste facility versus a right that a State may have to establish "...procedural or substantive requirements on a broad range of private and governmental activities proposed to be undertaken with the State." (S. Rpt. 97-282, p. 28). In doing so, Sen. Stafford intended, we believe, to assure

procedural equality while seeking to preserve those laws or rights which were not in conflict with this principle so as to provide states and tribes with as great an autonomous and participatory role as possible. We believe that Sec. 201, as proposed by Sen. Stafford carries with it the same well-directed intention. It is our conclusion that this goal is in fact achieved in the NWPA.

Thank you. This concludes our statement.

terests of the Federal Government, which must deal with the national problem of finding a final resting place for the products of U.S. nuclear activities despite the fact that few States, if any, would welcome the establishment of a nuclear waste repository within their borders. The approach taken by H.R. 3809, as a result of amendment introduced by Senator PROXMIRE, is to provide a statutory opportunity for a host State to object to a proposed repository. This objection would bar construction of the facility unless overridden by both Houses of Congress. I believe this is an effective and evenhanded approach for fairly balancing the interests of all parties. It will give the States—whose rights to participate in the nuclear waste repository process have generally lacked statutory footing—new bargaining power vis-a-vis the Federal Government during the period when the particular technical, environmental, and health and safety features of the facility are being developed; at the same time it will provide a mechanism for the Federal Government to vindicate the overall national interest in building a repository if an impasse is reached in these negotiations.

I am particularly pleased to see this mechanism embodied in law since it was first introduced by Senator PERCY and myself in the 96th Congress as part of the Nuclear Waste Management Reorganization Act of 1979, legislation that we subsequently reintroduced as S. 95 in the 97th Congress. I believe it is fair to say that our active early support for this evenhanded concept for resolving State-Federal disputes began the public dialog on this approach and assisted substantially in gaining for it the widespread support it now enjoys in the Congress and among State and local organizations.

I would also like to highlight another valuable element in this bill, the "monitored, retrievable storage" concept. It has been my view for several years that serious uncertainties remain as to our ability to dispose of nuclear waste in permanently mined repositories in a completely failsafe way, and I think it is widely accepted that more research will still be needed in this sphere. Quite possibly, our level of confidence will be greatly enhanced by the time we are ready to emplace nuclear materials in such a facility. On the other hand, a long-term monitored facility would have many advantages as a parallel approach: additional time would be available for resolving all outstanding technical issues surrounding the permanent geologic repository option; wastes could be cooled in an "MRS" for several decades prior to permanent burial, reducing heat/radiation stresses in any mined facility; a decision on whether to extract plutonium from spent nuclear fuel for further use could be deferred until clearly justified on economic grounds and until adequate methods for safeguarding this material were in hand; and finally, should any leaks or other loss of integrity occur at an MRS, it could be readily fixed—or the wastes removed to another site—actions that would be far more difficult, if not impossible, once a permanent repository were sealed. The bill, by requiring a study of the MRS concept keeps this option alive and available for future congressional consideration, while at the same time maintains necessary momentum toward solving the disposal problem on a permanent basis via the mined repository route.

Mr. KASTEN. Mr. President, I support the right of States to have a veto over the Department of Energy's nuclear waste siting decisions. The Senate-passed version of this would only allow a State's objection to a repository siting decision to stand if either the House or the Senate passes a resolution upholding that objection. Such a process is inadequate. Nuclear waste disposal decisions are far too important to allow an override of State and local concerns by congressional inaction.

The State of Wisconsin may be a potential future home for a permanent nuclear waste repository. The stable granite bedrock beneath scenic northern Wisconsin has been targeted by the Department of Energy for further study as a burial site, and the citizens of Wisconsin have a right to be concerned over the role the State of Wisconsin will be given in the final decision.

Justified or not, there is a perception by States that the Federal Government cannot be counted on to keep its word on radioactive waste management programs. One only has to look at the problems the State of New Mexico has had with the waste isolation pilot project to realize a similar situation could occur anywhere. In fact, in the State of Wisconsin, the Governor's office has been having a great deal of trouble with the Department of Energy over receiving information as to what the Department is doing in northern Wisconsin. The Department of Energy cannot be allowed to build a disposal facility without giving the States a meaningful role in the siting and construction decisions.

A long-range nuclear waste disposal program is critical to our Nation's energy future, and the proper role to our Nation's energy future, and the proper role of States in the siting of disposal facilities is critical to the success of this program. The only successful nuclear waste disposal program will be one which matches national policy needs with local citizen concerns. I am proud to join today with Senator PROXMIRE in cosponsoring new language to this legislation which gives States a strong role in nuclear waste siting decisions.

Mr. STAFFORD. I wonder if I might inquire of the distinguished Senator from Wyoming about a particular issue. As the Senator recalls, the bill passed by the Senate, S. 1662, included a provision stating that nothing in that act precluded any recognized right of any State or Indian tribe under existing law with respect to such a repository or monitored, retrievable storage facility. That provison, as I understand it, was intended to simply reiterate what would have otherwise been true under existing law. That provision was not included in the substitute amendment offered here today. Am I to understand that to mean that the failure to include that provision suggests that this act would preclude recognized rights of States or Indian tribes under existing law with respect to either a monitored retrievable storage facility or a geologic repository.

Mr. SIMPSON. The failure to include this provision of the original Senate bill should not be so interpreted. It was our view that existing law makes it very clear that recognized rights of States or Indian tribes to participate in either an MRS facility or a geologic repository would not be affected by this bill. Stated differently, the substitute amendment should not be interpreted to preclude the right of a State or Indian tribe to excercise any right recognized under existing law with respect to a MRS facility or a geologic repository.

Mr. STAFFORD. I thank the Senator for his assurances.

Mr. SIMPSON. Mr. President, I would like to make one additional comment about the population criterion contained in this bill. We have provided in this bill that, in deciding where to locate a geologic repository, one of the factors that should be considered in making that determination is population. The specific language in this bill states that the Secretary shall not locate the surface facility of a repository in a highly populated area or adjacent to an area 1 mile by 1 mile having a population of not less than 1,000 individuals.

I want to emphasize that, in addition to this population criterion, there are a number of other criteria set forth in this bill that the Secretary would examine in deciding where to locate a repository, including such things as geologic media, location of valuable natural resources, hydrology, geophysics, seismic activity, atomic energy defense activities, proximity to water supplies, the effect upon the rights of users of water, proximity to sites where radioactive waste is generated, transportation, and others. All of these criteria would be examined by the Secretary under this bill, and the population criterion is simply one of the many criteria that must be factored into the Secretary's decision.

Mr. SCHMITT. Mr. President, I rise in support of the nuclear waste bill. Its enactment in effect will resolve the question of safe disposal of nuclear waste by clearing the path for implementation of appropriate waste disposal technology.

technical reports supporting the schedule, decision points, screening criteria and planned activities for State review as development of a proposed facility moves forward.

e. The Committee amendment adds a clarification to section 701(d) of the bill to specify that a consultation and concurrence agreement cannot grant to the State or Indian tribe a right to exercise an absolute veto of any aspect of the planning, siting, development, construction and operation of the proposed project.

f. The bill directs the Secretary and the affected State or Indian tribe to seek to conclude the negotiated agreement within one year after the notification to the State or tribe. In making this direction, the Committee expects both the Secretary and the State or tribe to negotiate in good faith to develop an agreement within the time specified. In the event the agreement is not concluded within the one-year period and there is evidence that the Secretary has not negotiated in good faith to arrive at an agreement satisfying the requirements of section 701 of the bill, the Committee will consider appropriate action at that time. This action could include legislative action to halt further site exploration and facility development activities within the State until an agreement has been entered into.

g. The Committee amendment includes a provision (section 708) specifying that title VII of the bill constitutes the exclusive rights of participation by an affected State or Indian tribe in the development of any facility covered by title VII. This provision is subject to the proviso that an affected State or Indian tribe may continue to exercise any recognized right, or to seek any remedy, under existing law with respect to the facilities covered by title VII. Finally, the Committee amendment provides that the enactment of the bill will nullify any previous agreement for participation between the Federal Government and the State or tribe in the development of any facility covered by title VII of the bill.

Two fundamental principles underlie these changes to title VII in the Committee amendment. The first of these is that an affected State or Indian tribe should be entitled to the broadest possible rights and opportunities to participate in the development of the facilities covered by title VII, but that no such State or Indian tribe should possess the right, through this or any other Federal or State legislation, to exercise an absolute veto right over any aspect of the planning, siting, development, construction or operation of a facility covered by the title. The Committee expects this fundamental principle to govern any interpretation, including judicial interpretations, of the continuing validity of actions by an affected State or Indian tribe or of State statutes. Thus, for example, the Committee intends that any State statute requiring the affirmative vote of the citizenry of the State, by initiative, referendum or otherwise, as a precondition to siting a facility covered by title VII of the bill within that State would be voided by enactment of the changes in the Committee amendment. Other State statutes may impose procedural or substantive requirements on a broad range of private and governmental activities proposed to be undertaken within the State. The Committee recognizes that the continuing validity of these and other rights of affected States or Indian tribes, as those rights apply to the facilities covered by title VII of the bill, must ultimately be considered by the courts. The inability of the pro-

posed facility to satisfy any State substantive standard for protection of the public health, safety or the environment may well serve as the basis for formal objections to the project in accordance with the provisions of title VII of the bill. Ultimately, any such objections would be considered by the Congress pursuant to the State participation mechanism established by the bill.

The second principle is that all affected States and Indian tribes should be treated equally, and that no single State or tribe should enjoy an advantage over another. The Committee believes that this equality of treatment is an essential element in assuring the continued cooperation of all the States that will be considered as having potentially acceptable sites for these facilities. The Committee received testimony that at least one State that may qualify as an affected State may have obtained an agreement from Federal officials that would in effect grant the State an absolute veto right for a facility covered by title VII. The Committee intends that this agreement, as well as any other similar existing agreement, be nullified by the enactment of this Act, and that all affected States be limited to the participatory rights granted by title VII of the bill.

7. Permanent disposal of high level radioactive waste from atomic energy defense activities

The Committee amendment includes a new title VIII addressing the permanent disposal of high level radioactive waste from atomic energy defense activites. Section 801.(a) of the bill requires the President to submit to the Congress by January 31, 1983, a plan for the permanent disposal of defense high level waste now in temporary storage. Section 801.(b) specifies elements to be included in the President's plan. Section 801.(c) requires that the President, in preparing the plan, consider the cost, efficiency, health and safety, regulatory, transportation and public acceptability advantages of a unified disposal system that would use the system of repositories to be developed under title IV of the bill for the disposal of both defense and civilian nuclear waste. Unless the President determines that national security needs require the development of a defense-only repository, and that such needs outweigh the advantages of a unified system, the Secretary of Energy is directed to proceed with arrangements for a unified disposal system. Section 801.(d) provides that if the President determines that a defense-only repository is required, such a repository must be licensed by the NRC in accordance with existing requirements of law, must meet the site selection guidelines for repository sites to be developed by DOE under the bill, and must meet all applicable NRC requirements for repositories.

More than 291,000 cubic meters of high level radioactive waste generated by atomic energy defense activites are now in temporary storage at several Federal reservations. These wastes pose health and safety and environmental concerns similar to those posed by civilian high level radioactive waste. The Committee believes that the development of a permanent disposal solution for these wastes should be an essential element of any comprehensive nuclear waste management legislation. The provisions in title VIII of the Committee amendment are intended to assist in the development of this solution.

Source: S. Rpt. 97-282

Senator DOMENICI. As I understand it, you believe that the intent of the Stafford amendment is that the Nuclear Waste Policy Act not preempt all legislation which might relate to waste disposal, but only that that would frustrate the ultimate disposal of waste as we provided for it in the act.

Mr. BERICK. I think that my testimony is that any State or tribal rights that are inconsistent with that override veto provision is what we believe the act would require.

Senator DOMENICI. But maybe this amendment as drafted, and surely we do not want to delete the legislative history you have been referring to, but as drafted it might further restrict some of the participation, even though this was obviously not its intent. Is that correct?

Mr. BERICK. I believe that is correct.

Senator DOMENICI. I think so too and I think frankly we ought to—I believe definitely the first part of this amendment, that which precedes the proviso, clearly was not intended by Senator Stafford. I mean, I was at every meeting with him and I know he did not intend to further restrict that which the States could do, as you just described it in your last statement.

The proviso is up, it is still questionable in my mind as to what it really means versus the kind of existing laws before, did it intend that that be a different kind of law than the one you described in your last statement and still render it valid? I am not sure of that. If it did, obviously it would seem that is not what anybody testifying before this committee would want just on the basis of equality of treatment, if nothing else.

Mr. BERICK. I think that the nuts and bolts of my statement are that this language was incorporated into the Senate bill. The same kind of discussions we are having today were held on the Senate floor and in the committee. I think we have a fairly good understanding at this juncture about what those principles meant. We had colloquies on the floor between Senator Simpson and Senator Stafford about the necessity of preserving the existing States' rights in these areas and I think that is where the issue should rest.

Senator DOMENICI. Thank you very much for your testimony.

Mr. BERICK. Thank you very much, Senator.

Senator DOMENICI. Mr. Smith, chairman and chief executive officer, president of Carolina Power & Light Co., on behalf of Edison Electric Institute. Thank you for coming. If you have a prepared statement, it will be made a part of the record. You understood my reluctance to hear all of your wonderful testimony about the mission approach and the draft mission statement. Could you accommodate and just discuss the other issue today and we will get you back at another time for that or would that be too inconvenient?

Mr. SMITH. I can certainly accommodate, Mr. Chairman, and I will be glad to do so and will be very brief.

Senator DOMENICI. Thank you very much.

STATEMENT OF SHERWOOD H. SMITH, JR., CHAIRMAN, CHIEF EXECUTIVE OFFICER AND PRESIDENT, CAROLINA POWER & LIGHT CO., ON BEHALF OF THE EDISON ELECTRIC INSTITUTE, THE AMERICAN NUCLEAR ENERGY COUNCIL, AND THE UTILITY NUCLEAR WASTE MANAGEMENT GROUP

Mr. SMITH. Mr. Chairman, my name is Sherwood H. Smith, Jr., chairman and president of Carolina Power & Light Co. My testimony today is provided on behalf of the Nuclear Utility Industry, particularly the Edison Electric Institute, the American Nuclear Energy Council, and the Utility Nuclear Waste Management Group.

The nuclear utilities have also formed a small oversight group consisting of chief executive officers of both public and private organizations, known as the American Committee on Radwaste Disposal. Our testimony we submit is also on behalf of and in the interest of the electricity consumers of this country, whom we serve and who are paying the bills for the implementation of the Nuclear Waste Policy Act.

We worked, that is our industry worked very closely with many congressional committees over a number of years to bring about the enactment of the Nuclear Waste Policy Act. There were many compromises made during the development of this landmark legislation. While each participating party would certainly have preferred perhaps a bill more exactly to their own liking, we accepted the legislation as passed and will work to see that it is carried out as effectively and efficiently as possible, certainly with due regard to the interests of the States and the Indian tribes and all local governments.

Due to the complex nature of this legislation, we do not believe that it should be amended ad hoc, but that if it is to be amended at all, it should only be done after very careful and comprehensive consideration and hearings before the relevant committees of jurisdiction.

Section 201 of Senate bill 2846, the NRC authorization bill for fiscal years 1984 and 1985, would call for modification of section 126 of the Nuclear Waste Policy Act, that attempts to define the division of authority between the Federal Government and the individual States regarding various activities that are mandated by the Nuclear Waste Policy Act.

The proposed language does not appear, we believe, to achieve a clear improvement over the existing language of the act. I think the previous testimony and the colloquy between the chairman and several of the witnesses perhaps indicates that even more extensively.

There is specific guidance now provided in the Nuclear Waste Policy Act for consultation and cooperation between the Department of Energy and the States and the Indian tribes on this program. The State programs certainly are not to be used to prevent the discharge of Federal responsibilities under the Nuclear Waste Policy Act.

Thus, our utility industry opposes the amendment and this provision and urges that the committee delete it from the bill and as the chairman has indicated earlier, if indeed the committee should

have hearings where it is appropriate to discuss the DOE mission plan or other parts of this act, we would be only too pleased to present testimony at that time.

Thank you.

[The prepared statement of Mr. Smith follows:]

STATEMENT BY

EDISON ELECTRIC INSTITUTE

AMERICAN NUCLEAR ENERGY COUNCIL

UTILITY NUCLEAR WASTE MANAGEMENT GROUP

TO THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

SUBCOMMITTEE ON ENERGY RESEARCH AND DEVELOPMENT

UNITED STATES SENATE

ON THE

NRC AUTHORIZATION BILL FOR FISCAL YEARS 1984 AND 1985

S. 2846 - Section 126

AND ON THE

CIVILIAN RADIOACTIVE WASTE MANAGEMENT PROGRAM

JULY 31, 1984

The electric utilities with nuclear programs are vitally interested in all aspects of the Nuclear Waste Policy Act of 1982 (NWPA) and its implementation. This statement is provided on behalf of the nuclear utility industry and also represents the interest of electricity customers of the nation. The nuclear electric utilities have formed the American Committee on Radwaste Disposal (ACORD) to provide policy guidance for the utility industry efforts to overview the implementation by the Federal Government of the NWPA. Members of ACORD are Chief Executive Officers of both investor-owned and publicly-owned utilities with nuclear programs. The Tennessee Valley Authority is also associated with this effort. ACORD concurs with this statement and ACORD members will participate in Congressional

Hearings in all aspects of the NWPA in the future.

Consumers are now paying for services that the Federal Government is contracted to provide fourteen years or more in the future. Our industry and our customers will pay even more if these services are not provided as specified and on schedule. Accordingly, our industry is committed to be an active participant throughout the implementation period.

As specified in Section 302 of the NWPA, forty-six electric utilities have signed contracts with the Department of Energy (DOE) on behalf of themselves and their co-owners of eighty nuclear plants, for the required nuclear waste disposal services. The DOE program is being funded with revenues that are paid by the nation's electricity customers and provided through the electric utilities. The present funding rate is approximately $300 million per year and this will increase as more nuclear plants become operational. Congress has directed the DOE program to operate on a full cost recovery basis and we support that basic concept.

The magnitude of the program is mammoth; estimated to be about $20 billion in 1984 dollars, paid by the electricity consumers of the country, extending over several decades, making it the largest civil works program ever undertaken in this country. Assuring that the program is proceeding efficiently and effectively is of vital importance to all of us.

Our industry worked closely with many Congressional committees over a period of several years to bring about the enactment of the NWPA. Many compromises were made during the development of this landmark legislation. While each involved

faction would have preferred legislation more to their own particular liking, we accept the legislation as passed and will work to see that it is carried out as effectively and efficiently as possible. We do not believe that any change should be made in the legislation in the near-term. Moreover, due to the legislation's complex nature, it should not be amended ad hoc, but rather only through comprehensive hearings before the relevant committees of jurisdiction. Section 126 of S.2846, the NRC Authorization Bill for Fiscal Years 1984 and 1985, appears to be a modification to the NWPA that attempts to define the division of authority between the Federal Government and the individual states regarding various activities mandated by NWPA. The language of Section 126 does not appear to achieve a clear improvement over that of the NWPA. Specific guidance is provided in the NWPA for consultation and cooperation between the DOE and states and Indian Tribes on the program. State programs are not to be used to prevent the discharge of Federal responsibilities under the NWPA. Thus, the utility industry opposes the provision and urges the Committee to delete it from the Bill.

Implementation of the NWPA is the responsibility of the Office of Civilian Radioactive Waste Management (OCRWM) within the DOE. The potential adverse impact on operating nuclear plants is substantial, including the prospect of forced shutdown of the plants, if the service is not provided within a reasonable time period. The schedule mandated by the NWPA is reasonable and DOE must strive to achieve the schedule, not allow it to slip.

During the lengthy debate in Congress, when the NWPA was

developed, utilities pointed out the substantial penalties that they would incur without a reasonable waste disposal schedule. We argued strongly for away-from-reactor storage of spent fuel by the Federal Government at much earlier dates than the projected disposal date in repositories. However, in good faith of give and take negotiation, we accepted the approach to store spent fuel at reactor sites where it was permitted by NRC regulations, with major deliveries to DOE from nuclear power plants, beginning in 1998. This federal commitment has recently been confirmed in a letter dated May 30, 1984 from the DOE General Counsel to Senator J. Bennett Johnston. Also the utilities have agreed to pay up-front, by as much as fifteen years, for this service to assure that the program would be properly funded. In return, Congress provided specific direction for the waste disposal service and a schedule for its achievement. We believe that this commitment, codified by the NWPA, is appropriate, and must be honored.

A Mission Plan is required by the NWPA for the DOE program. In early May DOE published, for comment, its Draft Mission Plan, dated April 1984. Utilities have reviewed this Draft Mission Plan in detail and have submitted comments to the DOE. This Mission Plan provides a useful description of the DOE strategy for implementing the NWPA. It describes the overall waste disposal program, including systems integration plans, evaluation of potential institutional issues that may contribute to delay, and the possible co-mingling of defense wastes. Volume II of the Draft Mission Plan addresses specifically the eleven information items required by Section 301(a) of the NWPA.

This draft Mission Plan is basically a sound overall program and we urge Congress to accept the DOE program as provided in the Mission Plan. However, some improvements appear to be needed and our industry has provided recommendations in our comments on the Mission Plan. Since the waste management effort will extend over many decades, it is anticipated that changes will occur over time and the Mission Plan may need to be updated. While the time for updates may be flexible, such updates should be infrequent and provided only when significant program changes are encountered.

Five specific items are of primary concern to the electric utility industry as follows;

- A clear and firm commitment by DOE to accept spent fuel/high level waste from utilities at reasonable rates beginning in 1998 is needed. DOE should commit to accepting deliveries of spent fuel in 1998 and moving it from reactor sites at a rate equivalent to at least the reactor discharge rate,

- The NWPA mandates schedules and assigns responsibility for meeting these schedules to Federal agencies, primarily DOE and NRC. Section 114(e) specifies that a Project Decision Schedule for all Federal agencies is to be developed and that reports are to be made to Congress if such schedules are not met. Greater emphasis should be applied to assure that the scheduled milestone dates of the NWPA are achieved.

- The brief discussion of defense radioactive wastes does indicate that "the full cost allocated to permanent disposal of defense wastes will be paid by the Federal Government into the Nuclear Waste Fund..." This is appropriate if the wastes are to be co-mingled. The cost allocation between commercial and defense wastes should recognize all costs associated with the program under OCRWM; and an equitable basis defined for the allocation with the payment of federal funds on a basis similar to those provided under contract with utilities.

- The strategy proposed by DOE for the Monitored Retrievable Storage (MRS) Program---proceeding with siting and design in preparation for a later decision to begin construction when it becomes apparent that an MRS will be required, or is determined as needed for system optimization, seems appropriate. However, to assure

the timely availability of this option, the siting and licensing processes should be established and initiated as soon as possible.

- One significant area that should be addressed fully in the Mission Plan is the number of sites that are to be characterized prior to the selection of each repository site. The first repository should be selected from the three sites that are characterized if one or more of these sites are determined to be satisfactory for the development of a repository after the completion of site characterization at the three sites.

During the final Senate debate on December 20, 1982, Senator Simpson asked for clarification of the repository site selection procedure and this is reflected in the following brief excerpt from a colloquy with Senator Johnston.

> MR. SIMPSON . . . .
>
> Of the five sites nominated in the first round, three will be recommended for characterization, and one of these three will be selected as the first repository.
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> . . . . .
>
> MR. JOHNSTON. The Senator is correct.

Senator Johnston, one of the floor managers of the NWPA, did not in any way qualify his answer. He did not say that one of the three would be selected only if all three sites recommended for characterization were subsequently found "suitable". It was without doubt, the intent of Congress that one of the three initially characterized sites "will be selected as the first repository."

This interpretation is the only one consistent with the overall mandate of the NWPA which includes detailed scheduled or deadlines mandated by the Congress for accomplishment of the requirements of the Act by the federal agencies, including a "road map" interpreting the requirements of NEPA compliance. Thus, the language of the NWPA and the legislative history as reflected in the floor statements on the day of its passage, unambiguously support DOE's position that the President's recommendation to the Congress of the first qualified site for a repository will be selected from the initial three sites characterized, and the EIS need only consider such sites as alternates. An interpretation to the contrary could not be sustained because it would needlessly abort the deadlines established by the NWPA.

As a significant step toward program success, we note that the Nuclear Regulatory Commission did concur, by a 5 to 0 vote, with the Site Selection Guidelines that were prepared by DOE. While the time for concurrence was later than stated in the NWPA, the approach that DOE followed was appropriate, being totally open with extensive consultation with the states, the NRC and all other interested parties. This successful result provides the basis for getting on with the task of site characterization and the selection of an initial repository site. DOE is urged to proceed deliberately to make the nomination of five sites and the subsequent recommendation of three locations for site characterization by January 1985 as directed by the NWPA.

Senator DOMENICI. Thank you very much. Thank you, Mr. Rusche, Mr. Frishman, Mr. Berick, and Mr. Smith.

We stand adjourned.

[Whereupon, at 3:15 p.m., the hearing was adjourned.]

[Subsequent to the hearing Senator Domenici submitted the following letter:]

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United States Senate

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
WASHINGTON, D.C. 20510

August 3, 1984

The Honorable John J. Easton, Jr.
Attorney General
State of Vermont
109 State Street
Montpelier, Vermont 05602

Dear Mr. Easton:

As you know, the Senate Energy and Natural Resources Committee held a hearing on July 31, 1984 on S. 2846, the Nuclear Regulatory Commission's authorization bill. The subject of discussion of this particular bill, was Section 201, an amendment added by Senator Stafford. I have enclosed a copy of the bill for your information. It is my understanding that your office was contacted by my staff seeking your comments, either in person or for the hearing record--I have been informed that you did not wish to submit comments.

I would like to thank you for your assistance on this issue and please feel free to contact me if you need further information regarding this matter.

Sincerely,

Pete V. Domenici
U. S. Senator

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